

The complaint

Mrs F complains about a gas boiler and related service and maintenance contract supplied under a regulated conditional sale agreement by A Shade Greener (Boilers) LLP ("ASG").

Mrs F is represented in her complaint by a relative, Mr B. When I refer to things said or done by Mrs F, then this should be taken to include things said or done by Mr B as well, unless specified otherwise.

What happened

I issued a provisional decision on Mrs F's complaint on 20 August 2024, in which I set out the background to the complaint, and my provisional findings on it. A copy of that provisional decision is appended to, and should be treated as forming a part of, this final decision.

It's not necessary for me to go into great detail about the events leading up to this point as a result, but in summary:

- Mrs F entered a conditional sale agreement regulated by the Consumer Credit Act 1974, with ASG, in December 2013. Under this agreement, ASG were to supply and install a boiler at her home, and provide ongoing servicing and maintenance for a period of 14 years. A restriction was placed on Mrs F's property with the Land Registry, to prevent her from selling it without ASG's consent. Under the agreement, the boiler and installation cost £2,565.78, and the servicing and maintenance cost £4,722.48.
- The boiler was installed on 9 December 2013 and over the next few months Mrs F reported a series of leaks. A recurring theme of these reports was that water was leaking from the bottom of the boiler and onto Mrs F's kitchen worktops, and that this happened when it was raining heavily.
- ASG staff visited in February 2014 and July 2014 to try to fix the cause of the leaks, but further leaks were reported in January and February 2015. An engineer attended and said they couldn't find a leak, and there was some disagreement at this point over whether a leak was still present. A quality inspection took place in late February 2015 but this didn't comment on the alleged leak.
- Mrs F says she continued to experience the same leak regularly and reported this to ASG's engineers when they came for the annual service. Nothing was recorded in ASG's logs about this until February 2019 when a note was made that Mrs F had called to report water leaking down the back of the boiler in heavy rain. Mrs F thought ASG staff were rude and aggressive on this phone call, and told her she would be charged for a callout if an engineer was unable to find a problem. No engineer attended on this occasion.
- Mrs F called ASG to report a smell of gas in November 2019, and was advised to call an emergency number. Mrs F says she ended up having to pay a contractor £200 to stop a gas leak from a pipe which had been installed by ASG.

- Mrs F says she continued to mention water leaks at her 2021 and 2022 annual services, but no action was taken by ASG. She stopped communicating with ASG in early 2023 and stopped her monthly direct debit. She also didn't arrange her next annual service. These things caused ASG to treat the agreement as having defaulted, and it sent a default notice to Mrs F at her home address and her mother's address in August 2023, prompting her to contact the Financial Ombudsman Service.

During the course of our investigation, Mrs F obtained reports from two different independent engineers. One said the leak, if present, would be caused by a blocked condensate pipe or rain being blown down the boiler flue. The second engineer said there was a water leak from the "elbow" of the flue, and that there was also a risk of exhaust gases entering the property, but that it wasn't possible to tell if this had been an issue present from installation or which had developed over time.

In my provisional decision I made the following key findings:

- Mrs F, under relevant consumer protection legislation, could expect the boiler and the rest of the equipment installed by ASG to be satisfactory quality, and the installation and subsequent maintenance services to be carried out with reasonable care and skill.
- I thought the definition of the "equipment" ASG was responsible for in the conditional sale agreement included the boiler's flue. So ASG was responsible for maintaining the flue and keeping it in a satisfactory condition.
- There was no provision within the conditional sale agreement for ASG to charge Mrs F for callouts, and the information supplied alongside the agreement said she would enjoy "free 24/7 callouts". I thought it was wrong of ASG to tell Mrs F that she'd be charged for a callout if no issue could be found, and this had deterred her from having ASG investigate leaks from 2019 onwards.
- There was evidence of a long history of complaints from Mrs F of water leaking from the boiler during heavy rain. There had been several complaints in 2014-2015, and then a further confirmed report in February 2019. I did not think this had been a false report. Between these periods Mrs F said she was still getting leaks, but given the lack of evidence that these had been reported, I thought it likely there were either no leaks during that period, or they were so minor that Mrs F didn't think it necessary to report them.
- I thought ASG had wrongly told Mrs F in February 2019 that she'd be charged a fee if an engineer attended and couldn't find a problem, and this had stopped her from having the issue investigated further, given the leak was intermittent and there was no guarantee it would be occurring when an engineer attended.
- While leaks had not been noted by maintenance engineers at subsequent annual services, I didn't think this necessarily meant a leak was not present, again given that it was intermittent in nature.
- Water had, most likely, been leaking intermittently into and from the boiler, since early 2019. Mrs F had now been advised the boiler may be damaged internally and not to use it.

Concluding regarding the problems with the boiler, I said:

“...to summarise my findings on this part of the complaint – I think ASG has always been responsible for keeping the boiler and associated equipment in good repair. Mrs F reported a problem, but this was not investigated by ASG, so I think ASG failed to hold up its side of the agreement, and any subsequent deterioration in the condition of the boiler or associated equipment is something it would more fairly be found responsible for. Mrs F may not have arranged for the boiler to be serviced after 2022, however I think any contribution to the situation on her part is likely to have been of a minor nature.”

Regarding other customer service concerns Mrs F had raised, I made the following findings:

- I thought ASG had dealt with the 2014 and 2015 concerns reasonably seriously.
- I didn't think there was enough evidence regarding the alleged gas leak in November 2019 for me to say this was something ASG had some responsibility for.
- There was not enough evidence for me to be able to conclude ASG had been rude and aggressive towards Mrs F on phone calls.
- The amount of contact ASG had made with Mrs F over arrears and for the purpose of arranging annual services, was not unreasonable. Mrs F said she was rather unwell over the relevant period, but it doesn't appear ASG were made aware of this.
- While it hadn't been necessary for ASG to send a copy of the default notice addressed to her at her mother's address, it hadn't been unreasonable of it to do so in the circumstances as it had reasonably believed that she lived there.

In terms of how to resolve the complaint, I said the following:

“In my view, the relationship between Mrs F and ASG has broken down irretrievably. I think any resolution should, ideally, seek to bring an end to the contractual arrangements between them, as I think any ongoing agreement is likely to be problematic due to the very poor relationship and lack of trust between the parties.

The condition of the boiler is difficult to determine. It is more than ten years old, and one engineer has suggested it ought to be replaced as it might have internal damage due to water leaking back into it from the flue over a long period of time. However, it's not certain that replacement of the boiler is indeed required. There may be a simple solution to the problem, or there may not. There's not enough information for me to be able to conclude specifically one way or the other.

I'm currently minded that a “clean break” of the agreement would be the fairest resolution. The conditional sale agreement would be brought to an end and Mrs F can keep the boiler and associated equipment. She can then arrange for a qualified person to either repair or replace it, as she wishes. She will owe no further payments, all arrears will be written off, and all negative information relating to the agreement removed from her credit file. ASG will also need to pay the callout charges of the two engineers she engaged to look into the leaks, upon receipt of reasonable receipts showing these payments. This is because these expenses were incurred by Mrs F in the process of proving her case. ASG will have no further obligations under the agreement to service or maintain the boiler or related equipment.

Finally, I think Mrs F has been caused a degree of distress and inconvenience by the position ASG has taken since 2019 to the matter of the leaks, and the subsequent deterioration of the boiler installation which culminated this year in her being advised to stop using it. So I'm also minded to direct ASG to pay £250 compensation to reflect the impact of

its errors on Mrs F.”

I said I was willing to consider reasonable alternative proposals from either party, and asked that they send me any submissions they wanted me to consider.

The responses to the provisional decision

Mrs F hasn't provided any substantive comment on the provisional decision. ASG made extensive arguments against the provisional decision, which I could summarise as follows:

- It disagreed that the flue would be included in the definition of “Equipment” in the conditional sale agreement. If the flue was to be considered part of the Equipment, then it suggested that the gas and electricity supply to the boiler would also be so included, and these were obviously things it wouldn't be responsible for.
- It had never charged Mrs F for any call-outs, and it contested that it had told Mrs F that she'd be charged for a call-out in February 2019. Its notes from the time only recorded that Mrs F had been informed she *may* be charged for the call-out in the event no fault was found and the equipment was installed properly. It didn't have a recording of the phone call, but it considered Mrs F had probably been rude to its member of staff, not the other way around.
- In any event, it didn't agree that its contracts with consumers did not allow it to levy a call-out charge. It said there had been three court cases it had been involved in where the court had decided it could levy such charges lawfully.
- It was Mrs F who was in breach of the agreement, not ASG. She had failed to allow it to carry out the annual service for 2023 or 2024, and had stopped making her payments.
- It didn't see how it could be held responsible for leaks which had occurred after Mrs F had stopped having services carried out on the boiler. In particular, it considered the leak through the flue elbow would have been identified and fixed if regular servicing had been allowed to continue. It also considered any exhaust fume leaks would have been identified and attended to as well.
- Regarding the diagnosis made by one of Mrs F's engineers – that rain was being blown down the plume management kit¹ and into the boiler – if this was happening then this wasn't Mrs F's fault but it wasn't ASG's fault either. It was just a result of poor weather conditions combined with the flue being installed too close to a wall, meaning the plume management kit had been required.
- It didn't agree that it hadn't properly investigated concerns Mrs F had raised about leaks. It had attended between 2013-15, and had offered to do so in 2019. Various engineers had inspected the boiler as part of the annual services and no problems had been noted.
- While it agreed that the relationship between it and Mrs F had broken down, it didn't think this was its fault. Things had got worse because Mrs F had stopped communicating with it.
- It didn't think a clean break, as suggested in my provisional decision, was a fair way

¹ Referred to as the “periscope” by the engineer.

to bring the agreement to an end. It said Mrs F had, until May 2024 when an engineer said the boiler shouldn't be used for safety reasons, the use of a working boiler. It didn't see why it shouldn't be entitled to receive the residual cost of the goods as per what the conditional sale agreement said about ending the agreement early.

- It didn't agree that it should pay Mrs F any compensation for non-financial loss, or cover the costs she'd incurred in getting independent engineers to diagnose the leak(s). Mrs F had been asked to obtain this evidence by the Financial Ombudsman Service, so it didn't see why it should be left responsible for the costs involved.

The case has now been returned to me to review once again.

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 Mrs F hasn't made any substantive submissions, I've only had ASG's comments to consider. Before looking at these in closer detail, there are a few general points I think it's important to make.

First of all, I think it's important to state that the primary legislation which gives the Financial Ombudsman Service its powers, the *Financial Services and Markets Act 2000* ("FSMA"), says the following at section 228:

"A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case."

I think it's also important to state that I'm looking at a *complaint*, not a legal claim or cause of action. And I think this is important to say because, in my view, ASG has taken a somewhat legalistic approach to this complaint, and with how it has dealt with Mrs F. It has been quite focused on the rights and duties outlined in the conditional sale agreement and leveraging these to its advantage, but has not, I think, given much thought to whether it has treated Mrs F fairly.

Whether or not the flue is part of the Equipment

In my provisional decision I quoted the definition of Equipment (which ASG is responsible for maintaining) from the conditional sale agreement:

"a high efficiency Grade A condensing boiler together with all other parts and components that are critical in the normal function of the Equipment, including magnetic and limescale filters".

I accepted this definition could be open to interpretation, but thought it included the flue, stating:

"While there is perhaps some ambiguity in this definition, I think it would certainly include any flue installed by ASG, as this is critical for the intake of air and the expulsion of exhaust gases from the boiler. I think it's less certain that it would cover the pipework supplying the boiler with gas, unless this was also installed by ASG."

ASG has questioned the inclusion of the flue within the definition of "Equipment", drawing a comparison between the supply of electricity and gas to the boiler. The conclusion I think it is

inviting me to reach, is that because the supply of gas and electricity is not something it could be held responsible for, and these things are critical for the normal function of the boiler, it follows that other things which are critical for the functioning of the boiler (such as the flue) might reasonably be excluded from the definition of Equipment.

The supply of utilities such as gas and electricity are plainly not *“parts and components that are critical in the normal function”* of the boiler. The pipework and wiring which connect these utilities to the boiler, *could* fall within this definition but, as I indicated in my provisional decision, I think that would only be the case had ASG installed said pipework or wiring.

The flue, while not being a part of the boiler itself, is (normally) supplied by the boiler manufacturer and installed with the boiler as a matter of course, and is something which I think would reasonably be described as a “part or component” critical for its normal function. It was also not specifically excluded under the agreement. I remain of the view that the flue formed part of the Equipment and was therefore ASG’s responsibility to service and maintain.

The dispute over the call-out charge – and responsibility for the leak reported in 2019 not being investigated

ASG has referred to three court cases where it says it was decided that it could charge call-out fees lawfully. I don’t know the context of these cases, what precisely was argued by the parties, or what the judges said in any judgments they handed down. ASG hasn’t provided this information. I don’t think there is much weight I can attach to this point as a result.

The conditional sale agreement in this case does not say that call-outs will be chargeable. I can understand why ASG might have wanted to charge for call-outs where these were unnecessary, but I think this is something it needed to make clear in its agreement with Mrs F. And the information which accompanied the agreement in fact said the opposite – that Mrs F would enjoy “Free 24/7 Callouts”. My view is that it would not be fair and reasonable of ASG to charge Mrs F a call-out fee or to say or suggest that it would do so, in light of the information it had supplied to her prior to signing up for the agreement.

I am aware that the question of whether it was fair and reasonable for ASG to have levied call-out charges has been considered by the Financial Ombudsman Service in a number of previous cases, and other ombudsmen arrived at broadly the same conclusions on this point, as I set out in my provisional decision. ASG is required by the rules of its regulator to learn from the decisions of the Financial Ombudsman Service, so it’s disappointing to see it has maintained this position in the present case.

During the phone call in February 2019, it isn’t disputed that Mrs F reported a leak of a similar nature to the ones she had reported in 2014 and 2015. ASG says it didn’t tell Mrs F that she *would* incur a call-out charge, it just said that she *may* incur a call-out charge if no fault was found and the equipment was installed correctly.

I think, in practical terms, this is a distinction without a difference, because the effect would have been the same in this scenario. I say this because I think a reasonable person in Mrs F’s situation would have understood that the chance of being charged a call-out fee was significant. This was an intermittent leak which occurred during poor weather, and there had been at least one previous occasion where ASG engineers had attended and been unable to find a problem. So there was a fair chance that the same scenario would occur, and result in a fee being charged.

Whether ASG told Mrs F she would be charged if no fault was found, or might be charged, I think it was wrong to have said either of those things to Mrs F, and I think the effect of this

was to deter her from going ahead with the call-out. She did not unreasonably refuse to have ASG attend to investigate the leak, as I think ASG is implying in its response to my provisional decision. I would therefore place the responsibility for the 2019 leak report not being investigated, and the consequences of this, with ASG. I think ASG could have done more here to address Mrs F's report in a way which was fair, and reflective of the very significant sums she was paying for servicing and maintenance under the conditional sale agreement.

I concluded in my provisional decision that the water leak reported in 2019 had most likely continued, intermittently, from then on. I appreciate ASG has said several engineers since then had not identified a leak during the annual service, but that doesn't mean that an intermittent leak was not occurring. While I'm sure an engineer would have noticed a leak if water been dripping from the bottom of the boiler at the time of their visit, it's plausible, given its intermittent nature, that this was not occurring during any of the annual services. Additionally, based on the forms completed during the annual services, it doesn't appear that the engineers would have been testing or looking for water leaks, and it came to light during our investigation, that the engineers did not always complete these forms correctly in any case. Overall, I think Mrs F's testimony regarding ongoing leaks is plausible, and I remain of the view that a leak was continuing, on and off depending on the weather conditions, from 2019 onwards. I don't think Mrs F's failure to arrange an annual service for 2023 onwards is relevant, as the leak pre-dated this and, given what I've said above, it doesn't seem likely ASG's engineers would have identified that a leak was occurring.

ASG has suggested that the water leaks are essentially normal and to be expected due to the weather in this country. It has also said that the flue was too close to a wall and so it had been necessary for its installers to fit the plume management kit to mitigate this. Based on photos of the installation supplied by ASG, the relevant regulations, and the manufacturer's installation instructions for the boiler, it does appear that the opening in Mrs F's wall from which the flue emerges, is too close to an adjacent external wall. The exhaust has been diverted up a pipe which has been turned to the side so it discharges at an angle to the wall from which the flue emerges. The air intake part of the flue, however, has not been diverted and remains very close to the adjacent wall. It's unclear to me whether this is acceptable under the relevant regulations or manufacturer's installation instructions, but I make no finding on that either way.

Regardless, I don't think it's reasonable to say that Mrs F should simply accept the leaks as being a consequence of the weather. I don't think a reasonable person would find significant quantities of water leaking into their home from their boiler flue during heavy rain to be acceptable. I think it was ASG's responsibility under the service and maintenance part of the agreement, to investigate and resolve or mitigate this problem. It didn't do so appropriately following Mrs F's report in February 2019, and so the leak continued.

It follows that my conclusions regarding Mrs F's complaint are the same as the ones reached in the appended provisional decision. Neither party has commented further on the other customer service aspects of the complaint and, having reviewed these points again, I see no reason to depart from the findings I reached on them as outlined above and explained in more detail in the appended provisional decision.

Finding a resolution

I appreciate ASG is unhappy with the redress proposals outlined in my provisional decision. Ultimately, this is a relatively complicated scenario and information has been limited. It's unlikely to be possible to come to a perfect solution. The relevant section of FSMA states the following about the awards the ombudsman can make:

“(2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—

(a) an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);

(b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).

(3) A money award may compensate for—

(a) financial loss; or

(b) any other loss, or any damage, of a specified kind.”

I think, had the relationship between ASG and Mrs F not broken down irretrievably, a fair resolution to this complaint would have involved the payment of some compensation, and action on ASG's part to investigate and find a solution to the leak and carry out any repairs needed to the boiler or other parts of the Equipment to fix any water damage. The agreement could then have carried on as normal.

However, in this case the relationship has broken down and I still think that any resolution should bring an end to that relationship. ASG is concerned that it will not receive compensation for the boiler under my provisional proposals, and it also objects to paying any compensation for non-financial losses, or costs incurred by Mrs F in getting independent engineers to investigate the leak.

I can see there are two provisions within the agreement which allow it to be terminated early. There is one provision mandated by the Consumer Credit Act 1974, which allows Mrs F to bring the agreement to an end and pay no more, so long as she returns the boiler and has paid (or agrees to pay) at least £3,644.13 towards the agreement. There is also an “option to purchase” provision, which allows Mrs F to bring the agreement to an end and keep the boiler, so long as she pays an additional amount which varies depending on how many years have passed. At the point Mrs F's agreement was defaulted, this variable amount was set at £1,395 plus VAT².

We've not been provided with a statement of payments made by Mrs F towards the agreement in this case. But based on what the agreement says about repayments, and the fact Mrs F stopped making these around March 2023, I think Mrs F has made payments in excess of £3,680. She's most likely paid quite a bit more than this, as this figure doesn't take into account the fact that her payments were set to rise by 3% per year from the third year onwards.

I don't think that bringing the agreement to an end in line with the “option to purchase” provision would be fair and reasonable in the circumstances. The boiler is currently unable to be used and one engineer has said that it ought to be replaced due to potential water damage. It doesn't seem reasonable to me that Mrs F should have to pay ASG for a boiler which cannot be used and may require expensive repairs, or complete replacement, given what I've said above about any damage to the boiler being a consequence of ASG's failure to investigate and resolve the leak reported in 2019 appropriately.

² A new combi boiler could be supplied (albeit not installed) for this price.

That said, having reflected on the case, I think it would be fairer for the boiler to be removed at ASG's expense. Based on the comments of Mrs F's engineer, the boiler needs to be replaced in any case, so there would appear to be not much point in leaving the boiler with Mrs F. I also note that this approach, where the goods are returned, is more in line with the approach the Financial Ombudsman Service would take to other types of case involving conditional sale agreements, such as those involving cars which have turned out to be faulty.

Regarding ASG's objections to paying compensation for non-financial loss, or costs Mrs F has incurred in evidencing her case, I will say first of all that it's reasonable that where a complainant has incurred costs in obtaining expert evidence to prove their case (e.g. an engineer's report), and their complaint is successful, that the respondent business covers these costs (to the extent these are reasonable). Secondly, I think Mrs F has been caused a degree of ongoing distress and inconvenience by ASG's poor handling of her reports of leaks in 2019. I explained this in my provisional decision, but ultimately Mrs F has had to deal with the consequences of an ongoing (albeit intermittent) leak since 2019. I remain of the view that the £250 compensation I said I was minded to award, is a fair amount.

Prior to making my final decision, I wrote to both parties to explain the changes I was planning to make to the redress, to give them an opportunity to comment. I noted that the rest of the redress should only proceed once the boiler was removed safely at ASG's expense. I have received no comment from either party, and we are now several days past the deadline given for a response, so I have decided to proceed with the amended redress outlined above.

Putting things right

A Shade Greener (Boilers) LLP must take the following actions:

- Remove the boiler from Mrs F's property, taking reasonable care and leaving the relevant gas and electrical connections in a safe condition following the boiler's removal. It must not charge Mrs F for removal of the boiler.

A Shade Greener (Boilers) LLP and Mrs F should co-operate to ensure that this is done within a reasonable time. I would consider a reasonable time to be within one month of Mrs F accepting this final decision.

Once the action above has been completed, A Shade Greener (Boilers) LLP must take the following subsequent actions:

- End the conditional sale agreement and, if it reports data to the credit reference agencies, record the agreement as settled and remove any adverse information.
- Write off and permanently cease pursuing all arrears and other payments it considers due on the conditional sale agreement.
- Remove the restriction on Mrs F's property with the Land Registry.
- Upon receipt of reasonable evidence of Mrs F having paid these sums, reimburse any amounts Mrs F paid for calling out engineers to investigate the leak first reported in 2019, while her case was being investigated.
- Pay Mrs F £250 compensation.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mrs F's complaint and direct A Shade Greener (Boilers) LLP to take the actions outlined in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 1 November 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our investigator, so I need to give the parties to the complaint an opportunity to make further submissions, before I make my decision final.

I'll look at any more comments and evidence that I get before 3 September 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mrs F complains about a gas boiler and related service and maintenance contract supplied under a regulated conditional sale agreement by A Shade Greener (Boilers) LLP ("ASG").

Mrs F is represented in her complaint by a relative, Mr B. When I refer to things said or done by Mrs F, then this should be taken to include things said or done by Mr B as well, unless specified otherwise.

What happened

Mrs F entered a conditional sale agreement with ASG in December 2013, which ASG referred to as a "Boiler Replacement Agreement".

Under the agreement, Mrs F agreed to pay £2,565.78 for a gas combi boiler and related equipment, and £4,722.48 for maintenance and servicing over a period of 14 years. There was no interest payable on the agreement. For the first 3 months Mrs F was expected to pay £19.05 per month, then £38.09 for 21 months, and then 144 months starting at £39.23 and increasing by 3% per year. Mrs F also agreed to have a restriction placed on the Land Registry entry for the property, preventing any sale of the property without ASG's consent.

ASG remained the owner of the boiler and related equipment for the term of the agreement, and undertook to install it and keep it in good repair, condition and working order for the duration. ASG also undertook to attend callouts 365 days a year, provide an annual service to "check the effectiveness" of the boiler and equipment, and provide any parts needed to keep it in good working order.

The boiler was installed in Mrs F's kitchen on 9 December 2013, and the following day Mrs F contacted ASG to say water was dripping from a radiator. This appears to have been attended to, as no further complaint was made about this. From 13 February 2014 onwards however, there were on and off reports of water leaking from the bottom of the boiler onto Mrs F's worktops. ASG's records note that an engineer fixed a leak on 18 February 2014, but there were further reports in July 2014 of water blowing down the boiler flue, through the boiler and onto the worktops.

ASG's notes records that the flue was resealed later in July 2014, but further reports from Mrs F of a leak from the same area were recorded in January 2015, and at this time Mrs F cancelled her direct debit due to her dissatisfaction over the recurring problems. There were discussions over what needed to be done throughout the month, and in early February 2015 an engineer from ASG attended and said they couldn't find a leak. Mrs F called ASG about this and said she wanted to emphasise that the leaks only occurred during heavy rain, and was very unhappy that things remained unresolved. At around this time there appears to

have some conflict between ASG and Mrs F, as ASG considered Mrs F needed to restart her payments, but Mrs F was reluctant to do so as she didn't think the leak had been attended to. It appears Mrs F agreed to restart her repayments at around this time.

Later in February 2015 a quality control inspection was carried out. It's not clear what the results of this were in terms of any leak-related concerns, however the inspector reported that a previous engineer shouldn't have warned Mrs F not to box the boiler in, as the boxing could be removed to service the boiler.

Mrs F says she continued to experience water leaking from the flue, through the boiler and onto her worktops, and mentioned this to ASG's engineers each year when they carried out the annual service. However, it wasn't until 4 February 2019 that ASG's notes recorded further concerns. A note on this day said Mrs F had reported water leaking from around the flue during heavy rain and going down the back of the boiler. ASG said they could send an engineer but there would be a charge if everything was found to be ok.

Mrs F says she was unhappy about the prospect of being charged and felt ASG's customer services were rude and aggressive. It doesn't appear ASG attended a callout at this stage, and the next contact recorded was in November 2019, when Mrs F called to report a smell of gas. She was advised to contact the relevant number for gas emergencies, and says she was charged £200 for someone else to attend to this problem, which she says turned out to be a leak from a pipe ASG had installed.

Further annual services took place in 2021 and 2022, at which Mrs F says she again mentioned the leaks, but nothing was done. The 2023 service didn't take place. ASG says it sent many reminders to Mrs F about arranging the service, but received no response. It says Mrs F also cancelled her direct debit in March 2023 and failed to respond to contact about this. ASG issued a default notice in relation to the agreement on 10 August 2023, which it sent to Mrs F's address, but also Mrs F's mother's address, which ASG says it believed Mrs F might have lived at. Mrs F says she didn't appreciate default notices being sent to her mother's address.

It was around this time, in August 2023, that Mrs F contacted the Financial Ombudsman Service about the problems she was having with ASG. She said that the flue was still leaking and that her concerns had continually been ignored.

We notified ASG about Mrs F's complaint, and it responded to the complaint on 24 August 2023. It didn't think Mrs F's complaint had merit, and I could summarise its response as follows:

- While it was true that Mrs F had reported leaks, these had been attended to and the issues fixed by February 2015. Leaks had not been identified by engineers at the annual services.
- Mrs F had reported a leak in 2019 but had refused a callout from ASG. Subsequent annual services did not identify leaks.
- It had correctly advised Mrs F to call the gas emergency number when she'd reported a smell of gas. If the boiler had been the cause of the smell of gas then ASG would have been notified of this, but they hadn't been and they'd had no further contact from Mrs F over the issue.
- Mrs F was in breach of the conditional sale agreement by failing to arrange a service for February 2023 and failing to make her monthly payments.

- It had sent the default notice to the address on the agreement and to the address it believed Mrs F resided at, to comply with Civil Procedure Rules. It had believed Mrs F resided at another address because the Land Registry gave it as her address.
- If Mrs F settled her arrears and booked in a service, it was happy to look at the reported leak again. But if she didn't do this, it would take her to court.

Mrs F was dissatisfied with this response and asked the Financial Ombudsman Service to review her case. One of our investigators began looking into Mrs F's complaint. I won't go into all the details of the investigation, but it resulted in Mrs F seeking out an engineer to report on the leak. He reported back on 12 May 2024 to say that he'd been unable to see any flooding or leaks at the time of inspection, but that any flooding would be caused by a backed up condensate pipe or rain blowing directly through a "periscope" extension to the flue.

Our investigator didn't think this was sufficient evidence to uphold Mrs F's complaint, and wrote to both parties to explain this. Mrs F was unhappy with our investigator's stance. She said she'd been disgusted by ASG's customer service and, on 23 May 2024, said that another engineer had visited and declared the boiler unsafe. She sent our investigator a copy of a sheet the engineer had completed which declared the boiler unsafe, but our investigator didn't think this contained enough detail to change her opinion. As no agreement could be reached, the case was then passed to me to decide.

Prior to making a decision, I directed that some further enquiries be made of the second engineer, and of ASG.

I asked that further information be sought directly from the second engineer regarding his findings. He responded to us to say that water was leaking through the "elbow" of the flue, and that exhaust gases would leak back into the room. He said that his recommendation was to change the boiler, as internal damage could have been caused to the existing one. The engineer said he thought the leak could have been there from installation, or developed over time.

I asked that a request be made of ASG to provide copies of all their service records for the boiler, to see if there was any mention of a leak being reported. ASG provided copies, which showed that leaks had not been noted on the service forms. ASG was also asked to comment on the more detailed findings of the second engineer Mrs F had called out. It didn't think these findings were significant, arguing that it was more likely any recent leak was caused by Mrs F failing to arrange for the boiler to be serviced after 2022.

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.

Mrs F's agreement with ASG is a conditional sale agreement regulated by the Consumer Credit Act 1974, and this means the Financial Ombudsman Service is able to look at a complaint about the agreement, how it has been administered, and the quality and performance of any goods or services supplied under the agreement.

I think Mrs F's complaints about ASG can be summarised as follows:

Firstly, Mrs F contends that ASG either did not install the boiler and associated equipment properly, or failed to service, repair and maintain it properly, meaning she has experienced intermittent problems with water leaking from the bottom of the boiler into her kitchen,

especially during heavy rain. More recently, it's been alleged that exhaust gases from the boiler are either leaking, or could potentially leak, back into the kitchen, and that the boiler may be terminally damaged. Mrs F has also mentioned a leak of gas from a pipe in 2019.

Secondly, Mrs F complains that ASG's customer service has been poor: not taking reported problems seriously, telling her she'd be charged for callouts, being rude and aggressive, and sending a default notice to her at her mother's address.

I'll look at each area of complaint in turn, although there will be a degree of overlap between them. Firstly however, I will take a closer look at ASG's obligations under the conditional sale agreement, including those expressly included in the agreement, and those implied by law.

The conditional sale agreement and ASG's obligations under it

I note the agreement was entered into before the Consumer Rights Act 2015 ("CRA") became law, however I also note that to a large extent the CRA simply consolidated existing legislation³ and the standard of goods and services which could be expected by a consumer did not really change. Mrs F was entitled to expect any goods supplied under the conditional sale agreement to be "satisfactory quality" and any services to be provided with "reasonable care and skill", meaning the level of care and skill to be expected by a competent provider of the type of service in question. The price paid for a service can be relevant when determining what level of care and skill is considered reasonable.

The goods ASG supplied under the agreement were described as the "Equipment", which was further defined as follows: *"a high efficiency Grade A condensing boiler together with all other parts and components that are critical in the normal function of the Equipment, including magnetic and limescale filters"*. While there is perhaps some ambiguity in this definition, I think it would certainly include any flue installed by ASG, as this is critical for the intake of air and the expulsion of exhaust gases from the boiler. I think it's less certain that it would cover the pipework supplying the boiler with gas, unless this was also installed by ASG.

The services supplied under the agreement were the installation of the boiler and other equipment, and the keeping of these things in *"good repair, condition and working order for [the term of the agreement]"*, the provision of an annual service, and the replacement of any parts needed to keep the boiler and other items in good working order, at ASG's expense.

The agreement appeared to give ASG the exclusive right to carry out any repairs on the boiler or related equipment, as Mrs F was prohibited from allowing any third party to undertake repairs or modifications without ASG's consent. Mrs F was also required to exercise reasonable care in looking after the boiler and other equipment, and immediately notify ASG "on discovering any damage".

Finally, under the agreement ASG undertook to provide a 365 day callout service. It did not say anywhere in the agreement that callouts would attract a charge, and on the first page of the agreement the words "Free 24/7 callouts" appeared. I refer to this because a part of Mrs F's complaint is about ASG telling her she would be charged for any callouts where they were unable to find a problem. I think ASG was wrong to tell Mrs F this, and I'll return to the significance of this later.

The problems with the boiler, pipes, and flue

³ The most relevant pieces of which are the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

I'll say first of all that there is so little information about the 2019 gas leak Mrs F says came from a pipe installed by ASG, that I don't think it would be fair for me to conclude that ASG ought to be held responsible for it.

The question of the water leaks is more complicated. There is evidence of a long history of complaints of water leaking through the boiler flue and into Mrs F's kitchen, stretching back to February 2014, just two months after the boiler was installed. The complaints have a consistent theme of there having been bad weather – usually heavy rain – and Mrs F noticing water dripping or pouring from the bottom of the boiler.

It's unclear what the cause of the leaks was early on in the agreement, but ASG was responsible for attending to and fixing these, as per its obligations under the conditional sale agreement. It appears that ASG did visit several times and resealed the flue on the inside and outside – presumably to prevent driving rain from entering around the sides of the flue. By February 2015 they were satisfied they'd solved the problem. Mrs F appears to have disagreed at the time, and says she continued to experience and report leaks after this point. Unfortunately, there is no record of her reporting issues of this type again until February 2019. There are no notes on ASG's contact records, nor on the records completed by its engineers after annual services. I think it's more likely than not that either there were no leaks from February 2015 to February 2019, or that if there were any leaks they were of such a minor nature that Mrs F did not think it necessary to report them.

However, I think there is evidence that things started to go wrong when Mrs F reported another leak to ASG in 2019. This was of a similar nature to the 2014-2015 leaks – in that Mrs F reported that water was entering either via or around the flue. ASG says Mrs F refused to accept a callout. Mrs F says she asked ASG for help, but staff were rude and aggressive and told her she'd be charged if no issue could be found. While I don't have further evidence that ASG staff were rude and aggressive, ASG does appear to accept that it told Mrs F that she would be charged in the event a callout found no issues. For the reasons I've already explained, I think that was wrong, as ASG was not entitled contractually to charge any callout fees. And I can understand why Mrs F, worried that she would be charged if ASG couldn't find an issue which only appeared under certain conditions, decided against insisting on a callout.

The second engineer to visit this year identified that water was leaking through the "elbow" of the flue. He was unable to say if this had been occurring over a long period of time, or had started happening recently. ASG says it thinks this current leak has occurred as a result of Mrs F failing to arrange her annual services under the conditional sale agreement, but that doesn't seem to me to be the most likely scenario, for reasons I'll explain.

Mrs F reported a leak in 2019 of the same type she'd reported in 2014 and 2015. The second engineer also identified a leak of the same type in 2024. As leaks had been reported, and attended to, in the past, I've no reason to believe the 2019 report was a false report. Mrs F reported the leak to ASG, as was her responsibility under the conditional sale agreement. ASG's responsibility was to keep the boiler and associated equipment in good working order. However, it wrongfully asserted that it would charge Mrs F a fee if it visited and couldn't find a problem, and this led to the leak not being attended to in 2019.

ASG says no leaks were identified at subsequent services, but it seems probable this was because the weather conditions which cause the leak to manifest weren't present at the time of the services. I think the most likely scenario is that water has been leaking into the boiler and Mrs F's kitchen, intermittently, since at least as early as 2019.

Fast forwarding to the present day, Mrs F has been advised not to use the boiler due to exhaust gases being blown back into her property, and that the boiler may have suffered

internal damage due to persistent leaking of water from the flue. The second engineer says in this situation he would advise replacing the boiler, however I don't think I'm in a good position to say what the prognosis is, and whether carrying out suitable repairs to the boiler and flue would be a more appropriate course of action. Any redress would need to take into account the framework of the conditional sale agreement, and I will return to this topic later.

However, to summarise my findings on this part of the complaint – I think ASG has always been responsible for keeping the boiler and associated equipment in good repair. Mrs F reported a problem, but this was not investigated by ASG, so I think ASG failed to hold up its side of the agreement, and any subsequent deterioration in the condition of the boiler or associated equipment is something it would more fairly be found responsible for. Mrs F may not have arranged for the boiler to be serviced after 2022, however I think any contribution to the situation on her part is likely to have been of a minor nature.

Customer service concerns

I think it's clear that the relationship between Mrs F and ASG has been strained at times over the course of the agreement. There's not enough information about the details of most of the conversations since 2013 for me to be able to make a fair comment on these, but my general observations are as follows:

- I think ASG took the reports of leaks in 2014 and 2015 reasonably seriously, and did try to find solutions.
- As already mentioned, ASG should not have told Mrs F in 2019 that she would get a callout charge if it couldn't find a fault. This appears to have deterred Mrs F from reporting problems. I don't know specifically what was said in the conversations around this, and I therefore don't think I can conclude ASG must have been rude and aggressive.
- ASG has sent Mrs F numerous communications about arrears on her account, getting her annual service arranged, and so on, but that's not unreasonable. Mrs F appears to have stopped engaging with ASG at all past a certain point, and it's not surprising that ASG would want to contact her if the boiler needed servicing or she was behind on her payments. Mrs F has explained that she was quite unwell and this hampered her engagement with ASG, but it doesn't appear ASG were made aware of this.
- It probably wasn't necessary for ASG to send a default notice to Mrs F at her mother's address. ASG says it did this to comply with Civil Procedure Rules on the service of documents, however the Consumer Credit Act 1974 states that documents are properly served if sent by post or left at the address last known to the server as the person's address. The address on the credit agreement was Mrs F's last known address. That said, I don't think ASG acted unreasonably here. It had received no contact from Mrs F, she'd cancelled her direct debit, and it had found she was registered as living at another address (without necessarily knowing it was her mother's address). I can understand why it decided to send the default notice to both addresses.

Finding a resolution

In my view, the relationship between Mrs F and ASG has broken down irretrievably. I think any resolution should, ideally, seek to bring an end to the contractual arrangements between them, as I think any ongoing agreement is likely to be problematic due to the very poor relationship and lack of trust between the parties.

The condition of the boiler is difficult to determine. It is more than ten years old, and one engineer has suggested it ought to be replaced as it *might* have internal damage due to water leaking back into it from the flue over a long period of time. However, it's not certain that replacement of the boiler is indeed required. There may be a simple solution to the problem, or there may not. There's not enough information for me to be able to conclude specifically one way or the other.

I'm currently minded that a "clean break" of the agreement would be the fairest resolution. The conditional sale agreement would be brought to an end and Mrs F can keep the boiler and associated equipment. She can then arrange for a qualified person to either repair or replace it, as she wishes. She will owe no further payments, all arrears will be written off, and all negative information relating to the agreement removed from her credit file. ASG will also need to pay the callout charges of the two engineers she engaged to look into the leaks, upon receipt of reasonable receipts showing these payments. This is because these expenses were incurred by Mrs F in the process of proving her case. ASG will have no further obligations under the agreement to service or maintain the boiler or related equipment.

Finally, I think Mrs F has been caused a degree of distress and inconvenience by the position ASG has taken since 2019 to the matter of the leaks, and the subsequent deterioration of the boiler installation which culminated this year in her being advised to stop using it. So I'm also minded to direct ASG to pay £250 compensation to reflect the impact of its errors on Mrs F.

I'm willing to consider reasonable alternative proposals from the parties to the complaint.

My provisional decision

For the reasons explained above, I'm currently minded to uphold Mrs F's complaint and direct A Shade Greener (Boilers) LLP to take the following actions:

- End the conditional sale agreement and, if it reports data to the credit reference agencies, record the agreement as settled and remove any adverse information.
- Write off and permanently cease pursuing all arrears on the conditional sale agreement.
- Transfer the title to the boiler and related equipment to Mrs F, and remove the restriction on the property with the Land Registry.
- Upon receipt of reasonable evidence of Mrs F having paid these sums, reimburse any amounts Mrs F paid for calling out engineers to investigate the leaking flue, while her case was being investigated.
- Pay Mrs F £250 compensation.

I now invite the parties to the complaint to send any further submissions they would like me to consider, before 3 September 2024. I will then review the complaint again.

Will Culley
Ombudsman