

complaint

Mr and Mrs C complain about a boiler and servicing agreement financed by a conditional sale agreement with A Shade Greener (Boilers) LLP trading as A Shade Greener ('ASG').

Mr and Mrs C are unhappy with various aspects of the installation of the boiler and the service they received from ASG.

background

The facts of the case are well known to all parties. So, I'll summarise here rather than go into full detail.

Mr and Mrs C have complained about a number of problems with ASG and the boiler. They say:

- The initial installation wasn't carried out properly which led to various issues with the system.
- A plastic tank was left in the attic which they expected to be removed.
- ASG took too long to attend when called out.
- The boiler warranty has moved to a new provider which they are unhappy with.
- Their direct debit repayments have been increased, which they didn't agree to.
- ASG put a charge on their property, which they never knew about.

In January 2014 Mr and Mrs C signed up to a conditional sale agreement with ASG. This included finance for both a boiler with installation and a maintenance and service package. Later the same month the boiler was installed and ASG says a 'power flush' was performed as part of the installation.

Mr and Mrs C say they began to have issues with the boiler shortly after it was installed. An ASG engineer was called out to their property around two weeks after the installation, as Mr and Mrs C could smell gas. ASG said their engineer found no fault with the boiler.

Over the next few years Mr and Mrs C say they had various problems with the boiler including intermittent hot water and issues with the radiators. ASG attended the property several times.

In March 2017 ASG says the boiler was serviced and there was found to be debris in the system. It says the attending engineer cleaned components in the boiler as a gesture of goodwill.

In August 2017 ASG were called out to look at a fault. It says the fault was due to debris - and components and parts were cleaned.

In January 2018 ASG attended again. A 'remedial sheet/advisory notice' says the hot water was fluctuating and ASG "*Took tf1 filter out to clean and heat plate both full of debris*". Mr and Mrs C were charged £60 for this visit. ASG said the work wasn't covered under the service agreement due to the amount of debris in the system.

In February 2018, a third party plumber, who I'll refer to as 'W', attended the property to look at the boiler. W said there were several issues with the boiler. W said:

- A magnetic filter was leaking and full of sludge.
- An air release vent had been leaking.
- A domestic heat exchanger could be blocked and needed to be removed and flushed.
- The filling loop leaked when filled.
- The size of the existing pipework in the property could cause issues with the system and W recommended these were replaced.

In March 2018 ASG attended the property to service the boiler. Mr and Mrs C say they told the engineer about the issues W raised. But, Mr and Mrs C say ASG told them there were no problems with the system. And they said they were told the filling loop was fixed. A gas safety inspection was also carried out by ASG at this point. This noted the boiler was inspected and had no issues.

In March 2018 W attended and fitted new pipes to the system and performed a power flush. They also noted the filling loop leaking again.

Mr and Mrs C complained to ASG and it issued its final response letter. It said only one boiler was put in per day by the installers, so the installation wasn't rushed. It said a power flush and clean was performed and that any further power flush needed later was entirely due to the age of Mr and Mrs C's radiators. It said no fault was found at the initial call out when Mr and Mrs C said they could smell gas. It said Mr and Mrs C hadn't provided any details from the independent engineer. And it said the cleaning ASG engineers did, that Mr and Mrs C paid for, was needed because of problems with the existing pipework and was not covered under warranty.

Our service began to investigate the case. Our investigator upheld the complaint. He said he'd considered testimony from W and he thought it was likely there was either no power flush performed, or it was carried out poorly, when the boiler was installed. He said this meant the installation wasn't carried out with reasonable skill and care, which he thought was a breach of contract.

Our investigator said that he didn't think there was an issue with the warranty as this wasn't part of the finance agreement and was held with the manufacturer rather than with ASG. He said he thought it wasn't made clear enough that a charge would be put on the property, but he didn't think this would've made a difference to Mr and Mrs C's decision to go ahead with the agreement.

To put things right, our investigator said he thought it would be reasonable for ASG to reimburse Mr and Mrs C for some of the costs incurred from W. He said they should be reimbursed for the cost they paid ASG for the visit in January 2018. And, he thought ASG should pay Mr and Mrs C £200 to reflect the distress and inconvenience ASG caused.

After he'd issued his initial view, our investigator also said he thought it was clear from the agreement that Mr and Mrs C's direct debit repayments would increase.

Mr and Mrs C agreed with our investigator's outcome. ASG did not. It made various points, including that if a power flush hadn't been completed the problems with the boiler would've appeared much earlier. It said no flushing method would remove all debris. It said it doubted the reliability of the evidence from W. It said the tank may have been left in the attic because of the size, but either way, it said on a form Mr and Mrs C signed they didn't authorise its removal.

The case was then passed for an ombudsman's decision. I sent Mr and Mrs C a provisional decision on 27 August 2020. I've included my findings below:

Mr and Mrs C complain about the installation and various aspects of goods and services supplied and funded by a conditional sale agreement. This is a regulated product, so this service can investigate the complaint against ASG.

Mr and Mrs C have made various complaints about ASG, so I'll consider each of these in turn.

When thinking about what's fair and reasonable, I take into account relevant law. The Supply of Goods and Services Act 1982 is relevant to this complaint. This says that the supplier (ASG) needed to carry out the service provided to Mr and Mrs C with reasonable care and skill. So, I'll consider if I think this was the case when ASG installed and maintained Mr and Mrs C's boiler.

Boiler installation and maintenance

Mr and Mrs C have complained about various issues with the boiler. They said they don't believe the boiler was installed correctly which has led to problems later on.

One of the key things I need to consider in this case is whether I think a 'power flush' was properly performed when Mr and Mrs C's boiler was installed. I say this as a power flush formed part of the 'boiler replacement agreement' that Mr and Mrs C signed. I also looked up the 'installation and service instructions' for what appears to be Mr and Mrs C's boiler. These say the heating system should be flushed as part of the installation. On the boiler manufacturer's website, it says "Power flushing should also be performed when installing a new boiler". And, under the Building Regulations the 'Domestic Building Services Compliance Guide' also says a heating system should be flushed before a new boiler is installed.

So, it follows that if the system wasn't properly flushed, I may consider this to mean the installation was done without reasonable care and skill.

I've considered what evidence is available from the time. ASG has provided some testimony about the process carried out. And, it's provided a copy of a 'flushing certificate'. This says that a power flush was completed on 29 January 2014. And it's been signed by Mr C under the statement "I confirm the above heating system was flushed and treated in accordance with BS5793 using (brand) flushing method statements".

So, it appears Mr C signed to agree a power flush was carried out on the day the boiler was installed. But, I don't think this form tells the whole story. I've considered whether an average person who didn't work in the field would understand what a power flush was, or how it was performed - and I don't think it's likely they would. And I certainly don't think they would understand what "BS5793" or "(brand) flushing method statements" meant.

I've also considered that Mr and Mrs C specifically told us they were unaware of what the procedure involved. So, I don't think I can rely on this signed form to say a power flush definitely took place – or that it was properly carried out.

I've considered at what point in time issues appeared with the system following the installation. I understand ASG were called out several times by Mr and Mrs C, firstly around two weeks after the installation – but it appears no issue was found at this time. Looking at the history of ASG attending Mr and Mrs C's property, it appears that there was debris in the system that required cleaning in March 2017 – just over three years since the boiler was installed.

I've also considered what work W did to the boiler. W provided some testimony to this service about what happened and the issues at the time. So, I've thought about what W said.

In February 2018 W attended and cleaned out the domestic heat exchanger and replaced the magnetic filter which they said was leaking. They say they pointed out to Mr and Mrs C that a filling loop was leaking and suggested they tell the ASG engineer who was due to attend in the next few days. They also recommended a power flush and said there could be issues with blockages in the pipes due to the size - and recommended a re-pipe. W said this should've been noted on the initial site survey.

W's testimony said:

"I asked to have a look at the boiler and found the (brand) magnetic filter leaking, and when opened saw it full of sludge, which if properly flushed to boiler manufacturers (sic) instructions wouldn't have so much sludge in the filter"

"Having had a look inside the boiler I noticed the air release vent had been leaking and the water released was rusty due to not being flushed"

"on finishing the flush my flush filter was completely full (one of the worst systems I have seen in a long time)".

"In my opinion the company which installed the boiler has not fulfilled the contract which the customer agreed to, as they should not have had the problems with a boiler of the age it is"

I think it's quite clear from W's comments that they believe the installation wasn't performed with reasonable care and skill. I've thought about this, along with the timeline of events. I think it's clear W's opinion here is that had a power flush been performed properly on installation, issues wouldn't have arisen with Mr and Mrs C's boiler so soon. And, I don't think parts would've required cleaning as regularly. Thinking about what the manufacturer of the boiler said about requiring a flush before installation and the Building Regulations, I'm satisfied this means the installation was not carried out with reasonable care and skill.

I've considered whether Mr and Mrs C's existing pipework could've caused the issues they have experienced rather than an issue with the installation. I've considered that W recommended a re-pipe of their system – saying "I recommended a power flush but there could be issues with blockages in the pipe work due to the size and suggested a complete re-pipe". ASG also said that the issues could've been caused by the existing system.

Thinking about this, I haven't seen enough to make me think it's more likely than not that the pipes caused the issue. But, either way, this wouldn't change my opinion about the installation. I say this because if the issues are due to the pipes, I would've expected at the very least that these were recommended to be replaced during the installation – which as far as I'm aware wasn't done. I say this as ASG, and W both seem to agree this could at least potentially cause issues. So, I also think this would mean the installation wasn't done with reasonable care and skill.

ASG have said that they doubt the validity of W's statement and say they aren't independent. They say they believe the company may not have been trading when it undertook work.

I have considered that W isn't a completely independent party. But, I find the testimony they've given persuasive when considered along with the other evidence in this case. And, from looking online, I can see reviews for this company from several years ago. So I think it's most likely W was trading when it says. So, I don't think W's statement is invalid.

I've also considered that ASG said the problems were caused by "Mr and Mrs (C's) lack of due diligence in regards to their own heating system". But I haven't seen any evidence of this. It appears Mr and Mrs C informed ASG of the issues they were having, as I would expect. And I haven't seen anything else to suggest they weren't using or maintaining the system as they should have.

Mr and Mrs C say ASG broke a seal when it attended that needed to be fixed. I haven't seen any evidence to suggest this was the case. But, from W's testimony it appears a 'leaking filter' needed replacing. I'm not sure what happened here. But either way, I don't think parts should've needed to be replaced so soon after the boiler was installed.

Plastic tank left in attic

Mr and Mrs C say a copper tank was removed from the site which they were told would be sold - whereas a plastic tank was left in the attic. They say they believe the plastic tank should've been removed as part of the installation. ASG say the tank wouldn't have been removed if it was too big to fit through the loft hatch. But I haven't seen any evidence to suggest this was the case.

Looking at the agreement, this says "The Company will remove and dispose of the Customer's old boiler free of charge should the Customer wish or otherwise leave the same for the Customer to dispose of themselves".

In response to the investigator's view, ASG said Mr and Mrs C declined this option on the 'homeowner feedback form'. ASG have now supplied a copy of this. This says:

"I authorise A Shade Greener to remove my old boiler/tank and any other debris"

On the form, "old boiler/tank" has been crossed through and the box next to this crossed. Mr and Mrs C signed below this. So, it appears from the form Mr and Mrs C authorised ASG to remove debris, but it appears the option to remove the boiler was crossed through.

Thinking about this, I think it's somewhat odd if ASG removed a copper tank and left a plastic one. But that being said, it seems likely Mr and Mrs C signed to say ASG shouldn't remove the old tank. So, I don't think ASG needs to take any further action on this point.

Increase in direct debit repayments

Mr and Mrs C say they received notice their repayments were increasing, when they weren't expecting this. I can see ASG wrote to Mr C in June 2018 and advised that payments would be £50.15 per month for the next year.

Looking at the agreement Mr and Mrs C signed, under 'key features of the product' in the section 'repayments' this says:

"168 monthly repayments, being in the sum of £22.95 per month for the first 3 calendar months commencing immediately after installation, followed by 21 monthly payments in the sum of £45.89 per month, followed by 144 monthly payments in the sum of £47.27 escalating at 3% per annum after the third anniversary of the date of installation."

It appears Mr and Mrs C would've been due to pay £47.27 per month, with a three per cent increase per year from three years after the installation – which would be January 2017. So, in January 2017 I would expect the repayments to have been £48.69 per month. In January 2018 I'd expect this to increase to £50.15 per month – which is what the letter ASG sent explained.

I don't know why this appeared to increase in June rather than January. But, as this date is later, I can't see that Mr and Mrs C have lost out as a result of this.

Thinking about everything, I think Mr and Mrs C agreed to ASG increasing the repayments as above when they agreed to the finance. And it appears the increase is in line with this. So, I don't think ASG has done anything wrong here.

Warranty

Mr and Mrs C say they received a letter that they believed explained the warranty for the boiler moved away from ASG to a different company.

I've thought about this. But I think it's most likely the warranty for the boiler was always held with the manufacturer – not ASG. Looking at the agreement, the warranty doesn't form part of the finance. It's worth pointing out that the warranty appears to be separate from the servicing agreement. So, it follows I don't think ASG has done anything wrong here.

Delay in attending property

Mr and Mrs C say there were occasions where they called ASG out for a repair but it didn't meet the timescales in its terms and conditions. For instance, they say on the most recent callout it took ASG around six days to attend.

I've thought about what the terms and conditions say about this. They say:

"The Company will provide a 365 day repair call out to the Customer and in the event of a callout, the Company Warrants to the Customer that:-

If the company receives an emergency repair call from the Customer before 10am on any day a technician will arrive at the Property to check the Equipment before 10pm that day, or

If the Company receives the repair call from the Customer after 10am on any day, a technician will endeavour to arrive at the Property to check the equipment before the end of the following day.”

I've thought about what the terms say. I think the key thing here is that ASG says this applies to an “emergency repair call”. This isn't defined in the terms and conditions.

Mr and Mrs C say the main issues with the system were intermittent hot water and radiators not performing. I understand how frustrating this must have been for them. But, I don't think it's likely in this particular case that this would meet the term “emergency repair call”. I say this as I don't think it was likely, for example, that there was a risk of damage to Mr and Mrs C's property. And, from the very limited details I'm aware of, I don't think this would've impacted Mr and Mrs C's health.

It follows that because I don't think Mr and Mrs C made ‘emergency repair calls’, I don't think ASG breached the contract here.

Charge on the property

Mr and Mrs C say a charge was applied on the land registry on their property in relation to the agreement. They say this wasn't mentioned or explained properly when they took the agreement. It's clear from what Mr and Mrs C said in their complaint they feel very strongly about this issue.

I've considered what the terms and conditions say about this. These say:

“For the purpose of allowing the Company to be notified should the Customer wish to sell or otherwise transfer the Property, the Customer acknowledges and consents to the Company applying to HM Land Registry for the Restriction to be registered against the Property registered at HM Land Registry in the following form –

“no disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by A Shade Greener (Boilers) LLP of Sterling House, Maple Court, Maple Road, Tankersley, S75 3DP”

By entering into this Agreement, the Customer specifically consents to the entry of the Restriction against the Property.”

It's important to point out that a restriction is not the same as a charge. But, thinking about this, I would still expect such an important term of the agreement to be clearly pointed out to Mr and Mrs C. But, I can't see that this was the case. The condition is on the 11th page of the agreement. It is marked as being term number 13 in the agreement, but the numbers reset part way through the document. So it's actually term 31 of 40. I also can't see that the terms and conditions highlight this in any way. And, Mr and Mrs C weren't required to sign separately for this.

I've also considered what Mr and Mrs C said about this. They say at no point was this explicitly mentioned or explained properly during the sales pitch or when reviewing the agreement with the advisor.

Thinking about all of this, I'm satisfied this term wasn't explained properly or drawn to Mr and Mrs C's attention.

Our investigator also reached this conclusion. But, he said he thought Mr and Mrs C would've still gone ahead with the agreement. He said this was because the impact of the restriction wouldn't have put them off taking the contract for the boiler. But, I don't agree with him on this point. I'll explain why.

I think it's likely this restriction could cause Mr and Mrs C issues in the future if they decided to sell their property. It could cause delays, additional costs or issues with solicitors and conveyancing – during what is already acknowledged to be a very stressful time for most people. Had Mr and Mrs C known about this, I don't think they would've agreed to go ahead with the agreement and would've sought to get a boiler from another provider. I think this is an unusual term for such an agreement – and I'm confident they could've found an alternative supplier that wouldn't have placed a restriction on their property.

I've considered whether the agreement should be unwound due to this - as this would be the closest to putting both parties in the position they would've been in had this issue not occurred. But, this would be quite complex and would involve the removal of Mr and Mrs C's boiler which would be rather disruptive. As far as I'm aware, since the work W undertook at Mr and Mrs C's house the boiler is now performing as it should, and they are happy to keep it. So, thinking about what's fair and reasonable, I think ASG should remove the restriction.

Putting things right

Our investigator said ASG should refund Mr and Mrs C the cost of W's visit in February 2018, reimburse them for the cost of the power flush by W, but not the re-pipe, and pay them £200 compensation for the distress and inconvenience caused.

I've thought about this. I agree with our investigator that Mr and Mrs C should be reimbursed for ASG's visit in January 2018. And, I also agree that Mr and Mrs C have suffered distress and inconvenience because of what went wrong. Their boiler has not been performing as it should for some time, meaning they've had issues such as intermittent hot water. And, they've had to take time out to have visits by both ASG and W.

Mr and Mrs C have provided two invoices from W. The first is for the visit in February 2018 for a total of £180. I think it's fair this is reimbursed – as I'm satisfied these costs were directly linked to the improper installation of the boiler.

The second invoice from March 2018 is for £578. It's difficult to see from the second invoice what the cost of the power flush was and what was for the other work. I spoke to W who said the cost of a power flush is generally around £600 – but I'm aware this will depend on the system.

To keep things simple I think it's fair that ASG reimburse Mr and Mrs C the total cost of this invoice. I've considered that this invoice covers the cost of the re-pipe that W performed – and I can't be certain if this was absolutely essential or not. But, I'm not going to award Mr and Mrs C a separate amount of compensation for distress and inconvenience in addition to this. I'm satisfied any betterment that Mr and Mrs C have had from the additional work is the equivalent of any distress and inconvenience caused by ASG.

I gave both parties one month to provide any further comments or information for me to consider before making my final decision.

Mr and Mrs C responded and said they didn't have any further comments or information.

ASG got in touch and said, while it didn't agree with my decision about the installation, it would abide by it as a gesture of goodwill towards Mr and Mrs C. But, it said it didn't agree with my findings about the land registry issue.

ASG provided some dates it said it spoke to Mr and Mrs C about the land registry and it said they would've been fully informed. It highlighted where the land registry is mentioned in the agreement. And, it provided a form signed by Mr C from around the time the boiler was supplied that was ticked to say the entry on the land registry was explained to him.

I asked Mr and Mrs C to give their thoughts on the new evidence and comments from ASG. They said, in light of the goodwill shown by ASG, they did not want to pursue further action about the land registry issue. But, they said they thought ASG should be explicitly clear with consumers about contracts.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I still think this complaint should be upheld.

Given Mr and Mrs C no longer wish to pursue the complaint raised about the entry on the land registry, I won't make any findings about this particular issue and won't instruct ASG to do anything further here.

Having thought carefully about the other issues raised, I still think the complaint should be upheld. This is for the same reasons I explained in my provisional decision and set out above.

my final decision

My final decision is that I uphold this complaint. I instruct A Shade Greener (Boilers) LLP to put things right by doing the following:

- Reimburse Mr and Mrs C £60 for the ASG visit in January 2018*
- Reimburse Mr and Mrs C £180 for W's visit in February 2018*
- Reimburse Mr and Mrs C £578 for W's visit in March 2018*

*These amounts should have 8% simple interest added from the point of payment to the point Mr and Mrs C get this back. HM Revenue & Customs requires A Shade Greener (Boilers) LLP to take off tax from this interest. A Shade Greener (Boilers) LLP must give Mr and Mrs C a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 6 December 2020.

John Bower
ombudsman