

complaint

Mr and Mrs B complain about A Shade Greener (Boilers) LLP's decision to treat their conditional sale agreement with it as terminated and demand a final payment.

background

I set out the background to Mr and Mrs B's complaint in my first decision which was a provisional decision. But to help the reader I will set out the background again in this decision.

In March 2013 Mr and Mrs B entered into an agreement with ASG under which it supplied both a boiler and a magnetic filter together with maintenance services for the boiler and filter including breakdown recovery services.

In November 2018 ASG wrote to Mr and Mrs B reminding them of their obligation to keep the heating system in their house up to par. ASG suggested that to fulfil this obligation Mr and Mrs B needed to carry out a power flush. ASG made it clear that it would not carry out the power flush, rather, Mr and Mrs B needed to find a suitable engineer of their own to do it.

In response to this letter Mr and Mrs B called in a properly qualified third-party engineer to carry out the power flush. In addition, this engineer, according to them, told them that the magnetic filter was not working correctly and suggested they upgrade and change it. Mr and Mrs B did this. A few months later the boiler started to display an error code and not work properly. Neither party is suggesting this is due to the power flush or the new filter. ASG's engineer visited to check out the boiler and noted the new filter. However, the problems persisted with the boiler. Mr and Mrs B called out ASG again, but the problems remain with the boiler.

ASG's stance is that the filter is part of the equipment that it owns. It said by replacing the filter Mr and Mrs B had breached their agreement with it. On this basis it terminated the agreement and asked them to make a final substantial payment to it to pay for the boiler and filter in full. It also refused to continue to provide the maintenance and servicing services, although Mr and Mrs B say they have continued to pay for this service. It also charged Mr and Mrs B for the visit by the engineer which it said was a non-warranty visit which meant Mr and Mrs B were obliged to pay it £120. Mr and Mrs B did pay it the £120 but under protest.

Dissatisfied, Mr and Mrs B came to our service.

I took a look at Mr and Mrs B's complaint and I issued my provisional decision. In summary, I concluded that ASG had no proper basis for demanding that Mr and Mrs B exercise their option to purchase the boiler and terminating Mr and Mrs B's agreement and needed to take steps to put things right. I came to this conclusion for the following reasons.

The agreement I'd been sent had no provision in it to allow ASG to terminate the agreement and require Mr and Mrs B to exercise their voluntary option to purchase the boiler. I invited ASG to show me the part of the agreement on which it was relying, if it chose to respond to my provisional decision.

It appeared to me that Mr and Mrs B had upgraded the filter, and this was not prevented by the agreement and neither did the agreement give ASG the right to end the contract for this reason.

Mr and Mrs B had suggested that their legal rights as consumers had been breached because the law says the boiler and filter supplied by ASG had to be on satisfactory quality. I explained what this meant in this context. However, according to Mr and Mrs B the boiler and filter did not reach this standard. I made no finding about this, because I did not have sufficient information about the quality of these items. I said however, either party could send me information about this point, should they wish to in response to my provisional decision. I said I would then think about this further new information before I issued my next decision.

I noted it was clear that neither party wanted to continue with the contract, and it seemed that the relationship between the parties had entirely broken down with each side holding robustly to its stance.

For all of these reasons I found that it was fair and reasonable that ASG should end the agreement with nothing further owed by Mr and Mrs B and it should remove its equipment, (the boiler and the filter), at no cost to Mr and Mrs B.

Further, I found that ASG had acted unfairly and unreasonably in seemingly continuing to accept payments from Mr and Mrs B for the boiler, the filter and the maintenance services even though it had declined to continue to provide the maintenance services. I thought this was another reason why it was fair and reasonable to allow Mr and Mrs B to walk away from the agreement with nothing further owed by them. I also thought the repayments they'd made since February 2019 which is when ASG stopped supplying maintenance services, ought to be returned to them.

In addition, ASG had charged Mr and Mrs B £120 for what it called a non-warranty call out. However, again, there was seemingly no provision in the agreement between the parties for ASG to make this charge. On that basis, I thought it was fair and reasonable that ASG ought to refund the £120 with interest.

There had been a series of communications between the parties to try to sort out these issues. It seemed that it had been a nuisance for Mr and Mrs B to go back and forth with ASG like this. It appeared to me that this to and fro was mostly unnecessary and stemmed from ASG acting unfairly. For this reason, I asked ASG to pay Mr and Mrs B £150 for distress and inconvenience.

I invited Mr and Mrs B and ASG to respond to my provisional decision should they wish to do so.

Mr and Mrs B responded to say they accepted my provisional decision. ASG also responded to say that the money that Mr and Mrs B had paid it since it stopped providing maintenance services was solely to pay for the boiler and the filter and nothing else.

my findings

I thank Mr and Mrs B and ASG for their responses to my provisional decision. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision.

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 B have supplied no new information which is not surprising as they accepted my provisional decision. Whereas ASG has raised one point only in response to my provisional decision.

ASG has told us that the payments that Mr and Mrs B have been making since February 2019, are to pay for the boiler only. It suggests this means that Mr and Mrs B have not been paying for maintenance services since February 2019. That may be so, although I note the payments they made before February 2019 and after are the exact same amount. The point is that ASG has not been able to demonstrate that the terms of the contract permitted it to end the agreement and demand that Mr and Mrs B exercise their option to purchase, as it has done. For example, in part, ASG seeks to rely on the provision that deals with what happens if the consumer ends the agreement, but that is not what happened here. Mr and Mrs B did not ask to end the agreement. Also, I am satisfied it was not entitled to unilaterally decide that it would allocate all payments solely towards paying for the boiler and filter. I think it is appropriate to look to the terms of the agreement when thinking about whether ASG has acted appropriately because the parties freely agreed to be bound by these terms.

So, whether the payments were allocated to the boiler or whether the payments were for the services it has refused to supply is not really the issue. Rather, the difficulty for ASG is that it has not kept to its part of the agreement, it relied on rights it does not appear to have, but has still taken payments from Mr and Mrs B. For the reasons I have gone through, find that these payments must be refunded to Mr and Mrs B.

I have not been persuaded by the information ASG sent us after it received my provisional decision. It follows that I have reached the same conclusions for the same reasons as I did in my provisional decision and for the additional reasons that I have set out in this final decision.

my final decision

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

- End the conditional sale agreement with nothing further owed by Mr and Mrs B. It must also remove its boiler and filter as soon as reasonably practicable at no cost to Mr and Mrs B.
- It must ask the credit reference agencies to mark the conditional sale agreement as settled with nothing owed on Mr and Mrs B's credit files.
- Refund all repayments made by Mr and Mrs B since February 2019. It must pay interest on that refund at the rate of 8% simple per year. The interest to run from the date of the repayments to the date of the settlement.
- Refund the £120. It must pay interest on the £120 at the rate of 8% simple per year. The interest to run from the date of payment to the date of settlement.
- Pay Mr and Mrs B £150 for distress and inconvenience.

ASG must pay the compensation within 28 days of the date on which we tell it Mr and Mrs B accept my final decision. If it pays later than this it must also pay interest on the £150 from the date of my final decision to the date of settlement at the rate of 8% simple per year.

If ASG considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr and Mrs B how much it's taken off. It should also give them a certificate showing this if they ask for one, so that they can reclaim the tax from HM Revenue & Customs if appropriate.

Mr and Mrs B 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 Mr and Mrs B to accept or reject my decision before 20 May 2021.

Joyce Gordon
ombudsman