complaint

Mr C complains that A Shade Greener (Boilers) LLP terminated his conditional sale agreement in relation to a boiler. He also complains that the boiler was defective.

background

Mr C owns a property in which a boiler was installed in 2012. The boiler and installation were financed under a conditional sale agreement ("the agreement") with A Shade Greener ("ASG").

Mr C is represented in this complaint by Miss L, who now occupies the property as his tenant. But at the time the boiler was installed, the property was owned and occupied by Miss L's mother, who was the original party to the agreement. Miss L had her mother's authority to deal with the account for her. In 2016, Mr C bought the property, and ASG executed a new credit agreement with him, on substantially the same terms as the original. (I have noted that the new agreement is dated 2012, but this appears to be a mistake, and it is common ground between the parties that Mr C bought the property and took over the agreement in 2016.)

It was a term of the agreement that ASG had to service the boiler every year, for free. The agreement also said that the customer had to allow ASG to do this, or else ASG could terminate the agreement, in which event all sums payable under the agreement would immediately fall due. ASG invoked that clause in 2019, because the boiler was not serviced in that year. Mr C complains that this was not his fault, and that ASG deliberately failed to service the boiler and then covered its tracks, in order to justify terminating the agreement. There is a dispute about whether a service was ever booked: Mr C says it was, and ASG denies it. ASG says that it had persistently chased Mr C with letters, emails and text messages, to remind him to book the annual service, and it had not heard back from him. He had therefore breached the agreement. Consequently, he has had to pay ASG around £3,000.

Mr C also complains that the boiler didn't work properly, and that this had resulted in Miss L's mother being left without heat for about six months while she was still living there, in 2018. Miss L herself has also complained that ASG would not deal with her when she tried to book a service, and she complains about the security questions ASG asked her when she phoned, such as asking her for the make and model of the boiler.

ASG said that Miss L had not had Mr C's written authority to act on his behalf until very late, and then when ASG had tried to contact her, it had been unable to. Until then, ASG had not been able to accept her instructions to book a service. ASG also argued that as Miss L's mother was not a party to this complaint, anything that had happened before Mr C bought the property was outside the scope of this complaint.

Our investigator did not uphold this complaint. She restricted the scope of this complaint to ASG's decision to terminate the agreement, and the events which had led up to that. She said ASG had provided evidence of its repeated efforts to contact Mr C, and that it did not appear to have received any response to its correspondence. Neither party had any record of the phone call in which Mr C said he had booked a service, or any other evidence of such a booking. So she concluded that ASG had acted reasonably.

Miss L asked for an ombudsman to review this complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I do not uphold it. I will explain why, but first I will deal with the scope of this complaint – that is, which issues I have considered, and which I have not.

the scope of this complaint

Miss L's mother is not a party to this complaint. Neither is Miss L, who is not and has never been the account holder, and who acts only in the capacity of Mr C's representative. So under our rules, Mr C is the only complainant in this case. For that reason, I have not considered anything which happened before March 2016.

That does not prevent me from considering whether ASG sold Mr C a defective boiler when it entered a new credit agreement with him, so I could still consider his complaint about the boiler not working in 2018. However, I have chosen not to do so, for four reasons. Firstly, the person who was mainly affected by that problem was Miss L's mother. If I only dealt with this matter as Mr C's complaint, and his alone, then I would not be able to award him compensation for his tenant's discomfort and inconvenience, because I can only require ASG to compensate Mr C for his own inconvenience. Secondly, Miss L's mother could still bring a new complaint about the same matter, since she would be eligible to complain if she alleged that the boiler was defective when it was sold to her in 2012. It would not be fair to ASG for us to consider the same matter twice in two complaints, and it would probably seem unfair to the complainant if we dismissed her complaint without considering it, on the ground that we had already considered it without her involvement. Thirdly, Miss L has told us that our Service actually has already considered that same issue before. I cannot find any record of that in our records (probably because the file has been archived), so it is not clear to me to what extent we have considered it, but I would usually consider it unfair to the respondent for us to revisit the same issue a second time. Fourthly, because it appears that the investigation of this complaint by our investigator and by ASG has not covered that issue, and this case is now two and a half years old. It could be dragged out for several more months while both parties instruct experts to examine the boiler. So rather than requiring that to happen as part of this case, and asking Miss L's mother to join this case as another complainant at this stage, I think it is better that I conclude this case by resolving the other issues now, and leaving any complaint about the state of the boiler, and about whether ASG breached its obligation to repair it, to be raised by both eligible (or potentially eligible) complainants as a separate complaint.

Also, since Miss L is not eligible to complain in her own right, since she has never been a party to either agreement, I cannot entertain her complaint about the security questions ASG asked her when she phoned it.

For these reasons, in this decision I will only be dealing with the matters on which my colleague has already issued her opinion: the termination of the agreement, and related matters.

the termination of the credit agreement

I have read Mr C's agreement, and verified that the boiler had to be serviced annually, and that otherwise ASG would be entitled to terminate the agreement, and to demand immediate

payment of all sums payable under the agreement. So it only remains for me to decide whether it was ASG's fault it was that the boiler was not serviced in 2019. If that was, then I would not consider it fair and reasonable to conclude that ASG was entitled to terminate the agreement. And if it was not, then I would conclude that ASG acted reasonably.

In considering that point, I will also deal with ASG's refusal to deal with Miss L, on Mr C's behalf, until he had provided ASG with written authority for her to do so.

I have been told, and I accept, that Miss L had been authorised by her mother to deal with ASG on her behalf. That authority ended when her mother ceased to be a party to the agreement and Mr C took over. I can see how Miss L might not have appreciated that at the time, since she must have grown accustomed to dealing with ASG by then, and she lived on the premises as Mr C's tenant (he lived elsewhere). However, she was not ASG's customer, and so ASG was not able to deal with her until it was satisfied that it had Mr C's authority to take instructions from her. I don't think it was unreasonable of ASG to ask Mr C to fill in and return a form for this purpose, and this was not done until the last minute.

Meanwhile, starting in November 2018, ASG began writing letters to Mr C, asking him to arrange a time for its engineers to visit the property and service the boiler. These letters were all addressed to the property where the boiler was, which was the address on Mr C's credit agreement. He didn't live there, but since that was the address on the agreement I think it was reasonable of ASG to write to that address.

ASG wrote further letters in December and January, warning him that his warranty would be voided if the boiler was not serviced within a year of the last service (in the previous January). On 1 February 2019, ASG wrote a letter telling him that it had not heard from him, and saying that by not allowing ASG to service the boiler, he was in breach of the agreement. ASG concluded by saying that if it did not hear from him in the next seven days, it would invoice him "for all sums due."

At the same time as sending these letters, ASG was also sending emails to the same effect, to Mr C's email address. So even if his tenant was not forwarding the letters to him, it's likely that he was receiving the emails. So I'm satisfied that ASG took reasonable steps to remind him of the need to service the boiler, and of the consequences if he did not arrange for this to happen. The tone of the emails became increasingly urgent over time.

On 14 January 2019, ASG emailed Mr C to tell him that it could not communicate with Miss L about his account unless he filled in its third party access form. I think that email was clear. He must have responded to it, because in an email dated 31 January, ASG said that it had updated his account to give Miss L access as a third party. It went on to say that ASG had tried to contact her, but without success. Another email of the same date, 31 January, said that the anniversary of the last service had passed, and that ASG had not heard from Mr C, and that he was in breach of the agreement. It said that unless Mr C replied within seven days, he would be invoiced for all sums due. It sent reminders by email on 2 and 3 February.

Miss L says that she phoned ASG on 2 February 2019, within the seven day deadline, to arrange a service, and that therefore ASG should not have terminated the agreement. In support of that claim, she provided an email Mr C had sent to ASG on 8 February, in which he mentioned her phone call on the 2nd. ASG says it can find no record of that phone call, and no record of any booking. Miss L says ASG must be lying. However, she has not been able to provide any evidence of that call, other than Mr C's email.

I have read the email. It says that Miss L had made a phone call on 2 February, and during the call a service visit had been arranged for 27 March, some two months after the anniversary of the last visit. ASG denies that a service was arranged for that date, as it says that no engineers would have been available in Mr C's area then, and it points to the reminder email it sent Mr C on 3 February as evidence that suggests that no such visit had been booked.

ASG also sent text messages to Mr C's phone on 3 and 8 February, one to tell him to book a service, and the other to say he was in breach of the agreement and would now be invoiced.

I cannot verify whether engineers would have been available in Mr C's area on 27 March. But I think the point about more reminders being sent after 2 February is persuasive.

I think that the weight of the evidence supports ASG's account of events. ASG has demonstrated a history of non-contact by Mr C between November 2018 and January 2019, after it had sent him numerous reminders. There is no evidence that he did anything in that three month period except authorise Miss L to speak to ASG on his behalf, which he did just as time was about to run out. The evidence that Miss L, once she was authorised to speak for him, did so on 2 February is weak, since it amounts to no more than an email which she herself wrote a week after that date, and is not corroborated by any other evidence. Indeed, it is contradicted by the subsequent messages to Mr C on 3 and 8 February, by email and by text message. Not only do I think it is unlikely that those reminders would have been sent if a service had already been booked, but if a service really had been booked then I would have expected Mr C to question those reminders, and he did not.

Miss L has offered to ask her mobile phone company to search its records for the call. But as she has known since ASG's letter dated 26 February 2019 that ASG disputed that a service had ever been booked, I think she could have done that already, and I'm not going to wait.

On the balance of probabilities, I think it is more likely than not that no service was booked, and that no meaningful engagement was made by Mr C with ASG until it was too late. I find that ASG was entitled to terminate the agreement and demand full payment of all sums which were due under it. I don't think ASG was able to book a service with Miss L until Mr C had authorised it to do so, which did not occur until the end of January.

my final decision

My decision is that I do not uphold this complaint.

(I have not considered whether the boiler was defective when ASG sold it in 2012 or 2016, or anything which happened before March 2016, or whether ASG breached its obligation to repair the boiler in 2017 or 2018.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C, or Miss L on his behalf, to accept or reject my decision before 29 August 2021.

Richard Wood
ombudsman