

## **complaint**

Ms H complains that A Shade Greener (Boilers) Llp (the business) has not provided the service it should have done. She says she has lost faith in the business and wants to exit her agreement.

## **background**

Ms H entered into a 14 year conditional sale agreement with the business in December 2012 for a new boiler and a service and maintenance agreement to run for the duration of the agreement.

Ms H says that she has experienced problems with the boiler and that when she has contacted the business she has not received the service she should have. Ms H has noted the terms of her agreement which set out when an engineer will visit once a call has been made. Ms H says this did not happen and that action was only taken when she insisted on speaking to managers and threatened to complain.

The business says that when Ms H contacted it in October 2015 she did not receive the level of service she should have. It says she accepted the offer of a waiver for one month's payment.

The business says that the issue Ms H has raised about water ingress to the boiler was checked in November 2015 and a faulty pressure valve was replaced. It says that it offered to send its quality control officer to Ms H's property to assess the damage she had sustained and to inspect the installation but that Ms H did not respond to this offer. It says that it is keen to resolve any outstanding issues and that if the boiler has caused damage to Ms H's property it would consider appropriate compensation.

The business also noted that Ms H had previously raised the issue of the boiler banging on ignition. It says that there have been some issues with the boilers from a certain supplier and that this issue was being dealt with.

The adjudicator said that Ms H had not received the level of service she should have. He accepted that one month's payment had been waived and recommended that a further payment of £50 was made given the amount of times she had to complain to the business.

The adjudicator said that because he had not seen any evidence that the boiler was faulty he did not recommend that Ms H could exit her agreement. He said that the business had offered to inspect the boiler and that it should be given the opportunity to do this.

The business accepted the adjudicator's recommendation.

Ms H said that she did not complain that her boiler was faulty but that she had not received the service she should have. She said that she had signed a service contract but that she could not trust the business to fulfil this. She did not feel that the service issues she had raised had been adequately addressed.

## **my provisional conclusions**

I issued a provisional decision on this complaint. I concluded in summary that:

- Ms H had experienced problems with her boiler but these had been resolved;
- Ms H was not provided with the service she should have been under the agreement;
- a boiler is an essential item and I accepted that given the issues Ms H had experienced and the poor level of service in regard to repairs, Ms H had lost faith in the business to service her boiler;
- I accepted that Ms H was concerned about continuing to deal with the business going forward and the level of service she would receive; and
- I found that although the business had provided Ms H with compensation this was not sufficient redress.

Based on this I said that Ms H should be allowed to exit her service agreement. I said Ms H should be allowed to continue to make her monthly payments with all the money going towards repaying the cost of the boiler and that the business should offset the service element of Ms H's payments from October 2015 to date against the outstanding cost of her equipment.

Ms H initially responded stating that she only entered into the agreement because she wanted a service and maintenance agreement and that going forward she would want to have this in place. She said that she would prefer to have her monthly payments reduced by the service element so that she would have money available to pay for an alternative service provider to give her a service plan.

Ms H then contacted this service to say that given the issues she had experienced with the boiler to date she had lost faith in the business and wanted to exit the whole agreement.

The idea of exiting the whole agreement was put to the business. It said that it would agree to the provisional decision whereby Ms H exited the service element of the agreement but said it was not reasonable that she was able to exit the whole agreement. It said that the boiler was operating without fault and that there could be issues for Ms H in regard to having the boiler removed. It said that following the removal of the service part of the contract, Ms H's only contact would be to make her payments and she would continue to have use of an operating boiler.

In further conversations, Ms H said that she never intended to own the boiler when she entered into the agreement with the business but instead was entering into a long-term service agreement. She said that as the service agreement was breached she should be allowed to exit the whole agreement. Ms H did not consider it fair that by exiting only the service aspect of the agreement she would then be left with a boiler that she had experienced previous issues with.

Ms H also mentioned that she needed to be allowed to have other service companies come and look at the boiler in order to provide quotes for ongoing service contracts. She was concerned that she would be in breach of her agreement by allowing this.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what a fair outcome is in this case I have considered the points raised by both the business and Ms H in response to my provisional decision. I have also considered the business' response to Ms H's request to exit the whole agreement and Ms H's comments about her requirement for a maintenance contract.

I accept that Ms H entered into the original agreement with the business because she wanted a new boiler and a service and maintenance contract to support this. I find that she was reassured by the commitments in the agreement in regard to addressing any issues. It has been accepted that Ms H did not receive the service she should have.

There have been issues with Ms H's boiler and I understand her concerns that there might be future issues. However based on the information I have been provided with I understand that the boiler is currently operational and that there are no outstanding issues.

Ms H provided information about a manufacturing fault which caused the boiler to make a banging noise. She says she received a letter about this in July 2015 and then received poor service from the business in dealing with the issue. However I understand that this issue was resolved.

Ms H has said that she might get an independent report on the boiler. In regard to this, a report would need to show that the boiler was not fit for purpose at the point of supply. Given the boiler has been in place for around three years and Ms H has confirmed that the boiler is operational, I would expect a report to show this. I appreciate that there was a manufacturing issue but as I understand this has been resolved and is no longer ongoing I find that was a suitable remedy.

On balance, based on the evidence provided I do not find I have enough to say that the boiler was not fit for purpose.

As Ms H has confirmed the boiler is operational and does not have any current outstanding issues, I find it would not be reasonable to require the business to remove the boiler.

I understand Ms H's concerns about dealing with the business going forward but if she exits the service part of the agreement the only interaction would be to make her payments for the boiler. Assuming these are maintained there should be no need for Ms H to have further contact with the business.

I set out in my provisional decision that Ms H had not been provided the service she should have and this has been accepted by the business. I appreciate why Ms H wanted an agreement that provided her with comfort that should anything go wrong this would be resolved in a certain period of time. Based on this I find it reasonable that Ms H has the option of exiting the service part of the agreement.

I understand Ms H's comment that when she entered the agreement she didn't want to own the boiler and by exiting the service part of the agreement she feels she is put in this position. However, my role is to decide an outcome for this case which is fair and based on the information provided I find that being allowed to continue to use the boiler while removing any requirement to use the service and maintenance part of the agreement is fair.

I can see the importance of having a service contract for the boiler. There are other service providers that will provide cover for boilers and so by removing Ms H from the service part of

her boiler, but not the whole agreement, Ms H should be able to source an alternative service provider.

I appreciate Ms H's concerns about the need to get another service provider in to look at the boiler in order to provide a quote before she can decide what to do next. This has been mentioned to the business. Ms H will have time to decide whether or not to accept this decision and I find it reasonable that Ms H has other service providers look at the boiler in order to provide a quote.

In my provisional decision I suggested that Ms H continue to make her current payments with the whole amount going towards the cost of the boiler thereby reducing the term of her agreement. The business provided information in early August 2016 saying that Ms H would need to make a further 73 payments of £45.89 and one payment of £30.32.

Ms H requested that the payments were reduced so that the term remained the same and her costs reduced to just the boiler payments. While I understand the business' comments about a shorter term being preferable, I find it reasonable that Ms H has the option to continue payments over the original term at a reduced rate. This will reduce her monthly costs allowing money to pay for an alternative service provider.

The business provided information saying that 35 payments had been made between July 2013 and July 2016 and that the outstanding amount on the boiler at that time was £3,003.26. For Ms H to continue to pay for the boiler over the term this would mean a further 133 monthly payments of £22.57. This would result in the full payment for the boiler.

I also understand that there were issues regarding possible damage to Ms H's property which the business offered to investigate. I find that Ms H should deal directly with the business in this regard.

Given the breach of the service agreement happened in October 2015, I find that Ms H's payments towards this from that date until the settlement date should be refunded.

### **my final decision**

My final decision is that A Shade Greener (Boilers) Llp should:

1. allow Ms H to exit the service part of agreement with nothing further owing;
2. refund Ms H the payments made towards the service part of her contract from October 2015 to the date of settlement (this was calculated as £233.20 up to July 2016); and
3. reduce Ms H's ongoing payments to reflect the removal of the service part of her agreement (calculated as a monthly payment of £22.57 based on payments to July 2016).

Item 2 is subject to 8% simple interest from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 26 September 2016.

Jane Archer

**ombudsman**