

## **complaint**

Mr D complained that A Shade Greener (Boilers) LLP wanted to charge him a fee for missing his appointment under his boiler replacement agreement.

## **background**

Mr D took out a boiler replacement agreement with A Shade Greener in November 2013 which is also a repair and annual service agreement.

Mr D had an annual service on his boiler arranged with A Shade Greener for 1 October 2018. A Shade Greener says its engineer went to Mr D's property but Mr D wasn't at home.

A Shade Greener told Mr D he needed to pay it £75 for a missed service appointment and if he refused to pay and rearrange the service he would be breaking the terms of the agreement. It said that would mean Mr D would lose cover for his boiler which would lead to him breaching the agreement and having to pay all sums owed under the agreement.

Mr D complained to us about paying the £75. He says in the past he had problems with a different A Shade Greener engineer which, he says, cost him £100. Mr D wanted A Shade Greener to waive the £75 charge and re-arrange the service for free. Before our investigator gave his view about what should happen, in November 2018 Mr D paid A Shade Greener the £75 fee so it would service the boiler to maintain the agreement.

Our investigator thought A Shade Greener should refund the £75 to Mr D. The agreement Mr D signed up to didn't mention a missed appointment fee.

A Shade Greener disagrees and wants an ombudsman's decision. It said from April 2017 it had sent Mr D five separate emails telling him about the £75 fee for missed appointments. He hadn't disputed the possible charge until he had to pay it.

## **my findings**

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

Our service had previously decided that we can look at complaints about the type of agreement Mr D has with A Shade Greener. A Shade Greener hasn't disputed that we can look at this complaint.

I'm upholding this complaint. I'll explain why.

I've seen the emails A Shade Greener sent to Mr D from April 2017 telling him about the missed appointment fee. Before the October 2018 service it sent him the following email:

'We recognise that on occasions circumstances do change, therefore we do all we can to confirm your appointment by sending reminder texts and emails the day before. In the unfortunate event of our engineer attending your property as agreed and not being able to undertake the service for reasons beyond our control, you will be charged £75 for us having to rebook the service and re-attend to complete. Please note if your boiler is not serviced by ourselves as per your agreement, the warranty will become null and void.'

A Shade Greener did make Mr D aware of the £75 charge before visiting. Its engineer also sent Mr D a text saying the time he would arrive. From the evidence I've seen I accept the engineer attended as planned and the service didn't happen that day as Mr D wasn't available.

However, our investigator asked A Shade Greener where its agreement with Mr D set out that it's entitled to charge £75 for any missed appointments it wasn't responsible for. A Shade Greener said the agreement terms and conditions don't mention a charge for missed appointments. It thinks it's entitled to charge the £75 as it made Mr D aware of the charge and consequences of missing the appointment before the service.

I don't think A Shade Greener can fairly and reasonably charge Mr D a £75 missed appointment or rescheduling fee. The boiler agreement between A Shade Greener and Mr D details each party's responsibilities and obligations and what A Shade Greener can charge and the fee isn't in the agreement.

I think if A Shade Greener wanted to charge Mr D for a missed appointment it would have been fair and reasonable to set out the charge in the agreement so Mr D was aware when he entered into the agreement. That's particularly so given the important consequences for the continuation of the agreement if Mr D didn't pay the fee.

A Shade Greener must refund the £75 fee Mr D paid to it plus interest as I've detailed below.

### **my final decision**

I uphold this complaint.

I require A Shade Greener (Boilers) LLP to refund to Mr D the £75 fee plus interest\* at 8% simple a year from the date of payment to the date of settlement.

A Shade Greener (Boilers) LLP must make the payment within 28 days of us telling it that Mr D agrees my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 March 2019.

Nicola Sisk  
**ombudsman**

\*If A Shade Greener (Boilers) LLP considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.