

complaint

Mr A has complained that the boiler he got from A Shade Greener (Boilers) LLP on a conditional sale agreement isn't fit for purpose and wasn't correctly installed. He wants A Shade Greener to put this right as it provided him with the credit to pay for it.

background

I issued a provisional decision on 26 July, which set out the background to Mr A's complaint and my provisional findings and suggested redress. And I've attached a copy at the end of this decision for the sake of ease. In summary, I upheld Mr A's complaint on the basis his boiler and installation weren't fit for purpose and set out the redress I felt was appropriate. I also awarded some compensation for the distress and inconvenience Mr A had experienced.

Mr A has indicated he agrees with my provisional decision. A Shade Greener have recently confirmed they accept it and agree to the redress I set out.

my findings

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

As both parties have accepted my provisional decision - I see no reason to change the view I expressed in it on the fair and reasonable outcome to Mr A's complaint and appropriate redress.

my final decision

For the reasons I've explained in my provisional decision, I uphold Mr A's complaint and order A Shade Greener (Boilers) LLP to do the following:

- Cancel Mr A's conditional sale agreement with them from the start and refund any payments he's made under it. A Shade Greener must also pay interest at 8 per cent per year simple on the payments Mr A has made from the date he made them until the date they pay them back¹.
- Remove the charge they have put on his house.
- Remove any reference to the agreement, including missed payments and any default from Mr A's credit file.
- Withdraw their court action against Mr A and pay all the professional and court costs associated with this (including refunding anything Mr A has already paid) so far.
- Pay Mr A £500 in compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to Mr A and Ms A to accept or reject my decision before 8 September 2017.

Robert Short
ombudsman

¹ HM Revenue & Customs requires A Shade Greener to take off tax from this interest. If it deducts tax they must give Mr A a certificate showing how much tax it's taken off if he asks for one.

Copy of provisional decision

complaint

Mr A has complained that the boiler he got from A Shade Greener (Boilers) LLP on a conditional sale agreement isn't fit for purpose and wasn't correctly installed. I've referred to A Shade Greener through most of this decision for ease, even though the installation and some of the actions I've described were by their representatives.

background

Mr A got his boiler from A Shade Greener in August 2015 and they installed it soon after this. Mr A says he wasn't happy with the way it was installed at the time and started having problems with it soon after. He says A Shade Greener left his house in a very poor state and has mentioned the following issues about what they did:

- they didn't lag some pipes they'd installed
- they didn't do a proper power flush of his existing system which led to problems
- they let sludge pour out over his and his neighbour's drives
- they failed to remove the old water tank in his loft
- they failed to box in wiring
- they didn't clear up properly and left lots of other mess and waste
- they didn't fill the hole left when they removed the flue for the older boiler properly
- the valves they fitted on some of the radiators weren't fitted properly and leak
- the system has been unreliable since it was installed and he's had the following problems
 - the hot water to the kitchen tap takes a long time to come through and then keeps cutting out
 - the hot water to the bath keeps cutting out
 - the system keeps losing pressure and this means someone has to go in the loft to re-pressurise it. Mr A puts this down to the fact that some of the valves A Shade Greener installed are leaking
 - the plate on the boiler clogged up due to the fact that A Shade Greener didn't do a proper power flush initially

Mr A has also said he's disabled and yet despite this he was never given the option to have the boiler installed anywhere other than the loft. He says when he queried this with A Shade Greener they said he wouldn't need to access the boiler if there was a problem, as he could call out an engineer.

Mr A complained to A Shade Greener and they arranged to come out and put right some of the problems. But Mr A still wasn't happy after they'd been out and – as far as he's concerned - the installation was wrong and the boiler has never been fit for purpose. He's stopped making the payments due under his agreement and A Shade Greener have issued court proceedings to recover what he owes.

Mr A also thinks A Shade Greener harassed him once he stopped making the payments and is particularly unhappy that this carried on after they started court proceedings. And he's unhappy that they put a charge on his home without telling him they were doing this and didn't check whether he could afford the instalments due.

A Shade Greener think the problem lays with Mr A's existing pipework and that the boiler is fit for purpose. They accept there were problems with the installation, which they sorted out. And they think they're entitled to recover what Mr A owes them.

Our investigator reviewed Mr A's complaint. He didn't think there was strong enough evidence to show the boiler wasn't fit for purpose or that A Shade Greener failed to install it properly. Mr A isn't happy with his assessment and he's asked for an ombudsman's decision.

my provisional 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've decided to uphold it.

Mr A got his boiler under a conditional sale agreement, which means he has the same rights against A Shade Greener as a credit provider, as he has against them as the contractor who supplied and installed his boiler. This means if the boiler wasn't fit for purpose and the installation wasn't up to standard he's entitled to damages from A Shade Greener for breach of contract. And – because A Shade Greener are regulated, Mr A would also be entitled to compensation for distress and inconvenience if I thought the way they dealt with his claim against them as credit provider was poor. And if they harassed him when trying to recover the debt.

Having looked at everything Mr A has said and spoken to him about the problems he's had, I'm persuaded that the boiler A Shade Greener installed wasn't fit for purpose and the installation was well below the standard he was entitled to expect.

It's clear from the exchanges between Mr A and A Shade Greener's representative in October 2015 the boiler wasn't working properly and I accept that it's never really worked properly from this point onwards. And I can see no reason not to accept the statements of Mr A's friends, both of whom are professionals, which comment on how poor the installation appeared to be. A Shade Greener have said there's nothing to prove these statements were made by the people Mr A claims they were made by, but I think they were and that they show, along with other evidence, how poor the installation was.

The loss of pressure to the boiler may not have been mentioned specifically in the earlier exchanges, but I think it's most likely it was a problem from the start. And I think it's now clear the main reason for the loss of pressure was leaks on at least one of the valves A Shade Greener installed. This is because I've seen photographs provided by Mr A of one of these valves and accept what he's told me his plumber said about this quite recently. The photograph clearly shows the valve has been leaking for some time, as the connection has gone rusty.

I appreciate the loss of pressure may not have started straight away and that the problem may have been partly as a result of sludge in the system. But I think this was down to the fact A Shade Greener didn't do a proper power flush originally (which I'll comment on below) or make sure the existing pipework was compatible with the new boiler they installed. And it's clear from Mr A's exchanges with A Shade Greener's representative that by the middle of 2016 Mr A was having to refill the boiler up to three times per week.

I also accept based on what I've read and what Mr A has said that there have always been other problems with the boiler in that it doesn't consistently produce hot water. And I don't think A Shade Greener could have power flushed it properly otherwise the plate on the boiler wouldn't have clogged up so quickly. Also, when an engineer attended in July, he said a power flush was needed. Given how soon this was after the boiler had been installed, I can't see how a power flush can have been done properly originally.

A Shade Greener blame Mr A's existing pipework for a lot of the problems, but I don't think this is the main reason the boiler isn't working properly. They installed new valves on some radiators and I can see they weren't properly fitted and have been leaking. And their paperwork says the existing radiators were in good condition. And – in any event - if the existing pipework was a problem, A Shade Greener should have told Mr A this before they installed his new boiler and told him they couldn't install it unless he upgraded his existing pipework.

I can also see from photographs and the early exchanges between Mr A and A Shade Greener's representative that A Shade Greener left his house in a very poor state and didn't properly make good damage caused by taking out the existing boiler. Plus, I can see the pipework they did in the loft wasn't lagged originally and was quite poorly installed.

I don't think it was really appropriate for A Shade Greener to install the boiler in Mr A's loft. They've said they didn't know he was disabled, but he's provided evidence to show he is and I can see why he would have been concerned about the boiler being put in the loft. It might not have been obvious where the boiler could have gone other than the loft, but I think A Shade Greener should have looked at alternatives and I'm sure they could have come up with one.

Mr A has explained he's never been in the loft to access the boiler and has instead relied on friends to do this. However, he did say in several of his WhatsApp exchanges with A Shade Greener's representative that he'd been in the loft two or three times on those particular days to reset the pressure. So it's hard for me to accept he's never been in the loft. That said, I accept it's not easy for him. And I still think it's most likely Mr A mentioned this to A Shade Greener's representative and they should have explored locating the boiler where it was more easily accessible. This is because I've seen evidence that Mr A is on the highest level of disability benefit and so I don't think he would have wanted a boiler in the loft if it unless it was unavoidable. And I can't really see why he wouldn't have mentioned something so important to him, especially as his existing boiler was in the kitchen.

And I don't think the fact Mr A agreed to it being installed in the loft means it was appropriate. I think it's most likely from what he's said to me, he agreed to this without fully appreciating his options. And, as A Shade Greener is the expert, it was reasonable for Mr A to rely on their recommendation.

A Shade Greener have mentioned Mr A signed documents saying he was happy with the installation and to agree to them putting a charge on his house. But he's told me he wasn't given a copy of the documents at the time and was assured by A Shade Greener these were just standard documents he didn't need to worry about. In reality consumers sign paperwork without properly checking it because they trust the businesses they're dealing with. And I don't think what Mr A signed means he was happy with the installation or what A Shade Greener did to put things right afterwards.

And I accept Mr A's testimony that he was never told specifically that A Shade Greener were putting a charge on his home. This was very important and I don't think it was enough for A Shade Greener to just include it in the paperwork. And I don't think Mr A would have agreed to it if A Shade Greener had told him about it. This is because I accept what he's said to me about the fact he'd have been very worried about having a charge because of the problems it could cause with his mortgage and estate. And it was clear when we first told him about this he was very shocked and upset, which I think shows he wasn't told about it by A Shade Greener.

Mr A is right that A Shade Greener should have checked affordability before entering into the conditional sale agreement with him. This is a regulated agreement and rules for providing consumer credit require them to do this. That said Mr A has told me he could afford the agreement, so I don't think the fact A Shade Greener didn't check affordability caused him any problem.

As I don't think the boiler A Shade Greener installed was ever really fit for purpose and think their installation was well below an acceptable standard, I think Mr A is entitled to damages for this. And when I'm thinking about what he's entitled to I need to decide what's fair and reasonable.

Mr A agreed to pay a lot of money to get what he thought would be an adequate boiler properly installed and so I think what he gets as a result of A Shade Greener's failings should put him back in as close to this position as possible. And, I think it's fair to say he'll have to get the existing boiler removed and a new one installed, as well as new valves to replace the ones A Shade Greener installed.

So, to start with I think A Shade Greener should cancel Mr A's agreement and refund everything he's paid under it. This should enable him to enter into a new agreement with a new provider to have the boiler, pipework and valves removed and have a new boiler installed in a more suitable location, along with appropriate pipework and valves.

I appreciate it might cost Mr A slightly more because he has to have A Shade Greener's boiler uninstalled, but he has had some use from it, albeit with a great deal of frustration and I think he may well be able to get this included as part of a new deal with another boiler installer. So, I'm satisfied cancelling his agreement with A Shade Greener from the start is the fairest way to compensate him for the fact his boiler wasn't properly installed or fit for purpose. I've also decided to award interest on the payments Mr A actually made, as these were wasted and he'll now have to make payments for a new boiler.

I can understand why Mr A stopped making his payments for the boiler in the circumstances and, as I think it's fair for A Shade Greener to cancel the agreement, I also think they should remove any record of the agreement - including late payments or a default - from Mr A's credit records with any agencies they've notified. And they should stop any court action against him to recover what they think he owes them, and remove the charge on Mr A's home.

I've also considered whether A Shade Greener harassed Mr A after he stopped making payments and how they treated him when he complained. I've only got what Mr A has said about this and some basic notes from A Shade Greener, as they haven't provided a full log of their debt collections contacts. It seems clear A Shade Greener didn't act as sympathetically or thoughtfully as they should have done under the rules under which they operate. But, I also have to acknowledge that Mr A did stop payments he could afford as opposed to carrying on paying and then raising his complaint with us.

But I think some compensation is appropriate for the way A Shade Greener handled things overall and in relation to debt collecting. I accept the whole experience must have been very distressing and upsetting for Mr A and in view of this, I think a significant award of £500 in compensation is appropriate.

my provisional decision

For the reasons I've explained above I intend to uphold Mr A's complaint and order A Shade Greener (Boilers) LLP to do the following:

- Cancel Mr A's conditional sale agreement with them from the start and refund any payments he made under it. A Shade Greener must also pay interest at 8 per cent per year simple on the payments Mr A made from the date he made them until the date they pay them back¹.
- Remove the charge they have put on his house.
- Remove any reference to the agreement, including missed payments and any default from Mr A's credit file.
- Withdraw their court action against Mr A and pay all the costs (including refunding anything Mr A has paid) so far and any other costs associated with this.
- Pay Mr A £500 in compensation for distress and inconvenience.

A Shade Greener can come and collect the boiler they installed after it's been removed if they want to. Alternatively they can come and remove it at a time convenient to Mr A.

Robert Short
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