

Complaint

Mr and Mrs M complain A Shade Greener (Boilers) LLP ("ASG") has failed to keep to the terms of an agreement to install and maintain central heating equipment at their property.

Background

The background to this complaint, and my initial findings on it, can be found in my provisional decision which is attached to and forms a part of this final decision.

Both parties to the complaint replied to the provisional decision. Mr and Mrs M said they were happy with the provisional decision and reiterated their dissatisfaction with ASG. They also said they'd discovered ASG had registered a charge against their property on the Land Registry and were unhappy about this.

ASG said it disagreed with the provisional decision. Its reply could be summarised as follows:

- Power-flushing wasn't always an appropriate way to clean a system. There was no guarantee a power-flush on installation would have removed all debris from the system. In fact, information from a trade association suggested power-flushing would almost never eliminate all debris from a heating system.
- It was Mr and Mrs M's responsibility to maintain their existing pipework, and this was made clear in their agreement. Had they maintained their pipework there would have been no debris present to cause problems with the boiler. Mr and Mrs M hadn't provided evidence to show they had carried out any maintenance on their pipework.
- The system had been flushed to the relevant British Standard and in accordance with the manufacturer's instructions.
- Filters help with debris and do not create it. If Mr and Mrs M had been correctly maintaining their system there would be no debris to enter the filter.

The case has now been returned to me. Before beginning this decision I asked ASG to comment on my finding that it was responsible for maintaining the magnetic filter. It said I should refer to section 7.3 of the agreement, and noted that the filter had a one year warranty.

My findings

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

Unfortunately, based on its response, I don't think ASG has fully appreciated the reasons for my provisional decision. It also appears to have misunderstood the terms of its agreement with Mr and Mrs M.

the relevance of section 7.3, and ASG's responsibilities regarding the filter

Section 7.3 of the agreement, which ASG directed me to, states the following:

“Other than the Equipment, any items (a programmable room thermostat, thermostatic radiator valves and any additional pipework installed by the Company) installed at the Property by the Company shall benefit from a one year warranty.”

I explained in my provisional decision that the magnetic filter formed a part of the Equipment as defined in the agreement. This means section 7.3, which appears to be intended to limit ASG's responsibility for certain installed items to a period of one year, does not apply to the magnetic filter and it is therefore ASG's responsibility to maintain under the agreement (for the entire duration). As I mentioned in my provisional decision, the filter manufacturer said it should be cleaned annually and it remains my view that ASG should have been inspecting and cleaning the filter at each service if its effectiveness was impaired or would likely be impaired by the next service.

Power-flushing

In my provisional decision I didn't say that ASG's failure to carry out a power-flush was the cause of the heat exchanger becoming blocked. I also don't disagree that a power-flush may not always remove all debris from a system – as it appears there are several variables involved which can impact how effective it is, such as the skill of the person carrying it out. However, I did say that not carrying out a power-flush could have *contributed* to the debris problems that Mr and Mrs M experienced later on.

ASG has quoted from a trade association's website to support its position on power-flushing, but I note the same trade association also recommends a power-flush is carried out on a newly-installed central heating system, and states chemical flushing “doesn't work”. Overall, I find the evidence from the trade association's website tends to support a conclusion that ASG *should* have carried out a power-flush when it installed Mr and Mrs M's boiler, and that a power-flush would have been more effective than the kind of flush ASG actually carried out.

Mr and Mrs M's existing pipework and its condition

Whilst I agree Mr and Mrs M are responsible under the agreement for the maintenance of the pipework and radiators, I don't think it's likely the debris build-up which caused the heat-exchanger to become blocked was caused by their failure to do so.

I don't think it's reasonable of ASG to say that because the debris came from Mr and Mrs M's system, this means that they have failed to maintain it properly or that ASG can avoid its maintenance responsibilities regarding the boiler and filter. It seems that debris will always build up over time in a heating system and, as I explained in my provisional decision, I thought ASG's failure to clean the magnetic filter (leading to it becoming unable to filter debris out of the water) was likely to be one of the main contributing factors to debris blocking the boiler. I also thought it was possible the use of a less thorough type of flush may have contributed to the problem, and my view on that has now been reinforced by the opinions expressed by the trade association referred to by ASG.

Certainly, it seems the balance of evidence is in favour of Mr and Mrs M here, as the only evidence that the debris build-up was caused by them is an assertion by ASG that they have failed to maintain their pipework and radiators. On the other hand, ASG carried out a less thorough kind of flush on installation than promised in the agreement, and has failed to inspect and clean the filter during the annual services. Having carefully weighed up the evidence, I remain of the view that it's more likely that failures by ASG in meeting its obligations under the agreement with Mr and Mrs M have led to the problems with the boiler, and the costs that Mr and Mrs M have incurred as a result.

Customer service

Neither party to the complaint has commented on the findings in my provisional decision that ASG's customer service had been generally poor, so it follows that my views on this aspect of the complaint remain the same.

Putting things right

To put things right, I direct ASG to take the following actions:

- Refund the call-out charge of £120 which it added to Mr and Mrs M's direct debit. 8% simple yearly interest* should be added to this refund, calculated from the date the direct debit was taken, to the date the refund is given.
- Reimburse Mr and Mrs M the £540 they paid to have the system power-flushed, along with 8% simple yearly interest* calculated from the date Mr and Mrs M paid for the power-flush, to the date the amount is reimbursed to them.
- Inspect and clean the magnetic filter at the 2019 and all subsequent annual services remaining under the agreement. If the 2019 service has already been carried out then ASG must either return within four weeks of a final decision being accepted, to inspect and clean the filter, or cover the cost to Mr and Mrs M of having another heating engineer carry out this work.
- Pay Mr and Mrs M £250 compensation to reflect the frustration and annoyance caused by its failure to meet its responsibilities under the agreement, and the poor level of customer service it's provided to Mr and Mrs M. ASG must pay the compensation within 28 days of the date on which we tell it Mr and Mrs M accepts a final decision. If it pays later than this it must also pay interest on the compensation from the date of a final decision to the date of payment at 8% a year simple.

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

My final decision

For the reasons explained above, and in my attached provisional decision, I uphold Mr and Mrs M's complaint and direct A Shade Greener (Boilers) LLP to take the actions set out in the "Putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 3 October 2019.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs M complain A Shade Greener (Boilers) LLP ("ASG") has failed to keep to the terms of an agreement to install and maintain central heating equipment at their property.

background

Mr and Mrs M entered a regulated conditional sale agreement with ASG in August 2014 to install a boiler (and associated equipment) at their home and keep this maintained and serviced for a period of 14 years.

The price of the boiler and equipment on the agreement was £3,998.37, and the maintenance and servicing was £4,722.48. Mr and Mrs M were required to make monthly repayments which increased by 3% per year from the third anniversary of installation.

The boiler was installed and commissioned on 28 August 2014. For some years after that, the relationship with ASG was relatively uneventful. In February 2018 Mr M reported his shower and bath taps were not heating up. ASG said they could send someone to investigate, but would charge if the issue was caused by the shower and taps, or by debris in the heating system. Mr and Mrs M called out an independent engineer, who reported the boiler's heat exchanger was getting blocked. They contacted ASG about this and were told the problem must be debris in the system and it needed a "power-flush", but it appears no further action took place at the time. Mr and Mrs M say they continued to experience intermittent problems with their hot water in the following months.

In August 2018 ASG sent an engineer to carry out what was described in the agreement as an annual service. A month later Mr M called ASG to report the boiler was delivering hot water inconsistently, and asked for an engineer to visit. A few days later someone attended from the boiler's manufacturer. They reported the heat exchanger and magnetic filter were completely blocked by debris and the expansion vessel was flat, and they said Mr and Mrs M may be charged by ASG for the visit. I understand the blocked parts were cleaned at this point.

Mr M then complained to ASG. He said the system should have been power-flushed at the time of installation and the engineer should have cleaned the magnetic filter during the annual service, but he didn't think these things could have been done. ASG didn't uphold the complaint. It said it had carried out a manual flush at the time of installation, and it had no obligation to clean the magnetic filter as part of the annual service. ASG added that its engineer had re-pressurised the expansion vessel during the service, and that any build-up of debris in the boiler had been caused by Mr and Mrs M's failure to look after parts of their heating system which fell outside of ASG's responsibility to maintain.

Mr and Mrs M then brought their complaint to this service. One of our investigators looked into the matter. He came to the following conclusions:

- ASG was supposed to carry out a power-flush when it installed the boiler, but it had carried out a different kind of flush. This hadn't been to Mr and Mrs M's disadvantage because the different types of flush achieve the same result and it seemed unlikely the problems in 2018 related to a different kind of flush being carried out four years previously.
- ASG had probably re-pressurised the expansion vessel during the 2018 service even though it was found to be flat a few weeks later. A photo provided by ASG to show that this had been done was not very convincing, but ultimately even if it hadn't been done at the time, it was re-pressurised free of charge when it was found to be flat.
- ASG should have cleaned the magnetic filter and heat exchanger as part of its annual service, but had failed to do so. This meant Mr and Mrs M had to pay to get these cleaned, and this hadn't been fair.

Our investigator recommended ASG reimburse Mr and Mrs M the £120 they'd paid for the call-out during which the boiler was repaired, and pay them £100 compensation

Mr and Mrs M said they partially agreed with the investigator, but they noted they had recently had to pay £540 to have the system power-flushed themselves. They said they wouldn't have had to get this done if ASG had fulfilled their obligations, so they wanted this to be reimbursed as well.

ASG didn't accept the investigator's conclusions. It reiterated its position that it was not responsible for cleaning the magnetic filter, and the annual service did not include this kind of work.

As no agreement could be reached, the case has been passed to me to review.

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.

There are a number of different issues in this case, but in the end they can be summarised under two broad headings. Firstly, did ASG fail to meet its obligations to Mr and Mrs M in supplying, installing and maintaining the boiler and equipment? Secondly, did any failings on ASG's part cause Mr and Mrs M to lose out financially or in some other way?

what were ASG's relevant obligations to Mr and Mrs M?

Mr and Mrs M's agreement with ASG can be divided into two parts – the supply and installation of the "Equipment", and the maintenance of said items for the duration of the agreement. I'll deal with these in turn.

In summary, ASG's relevant obligations under the supply and installation part of the agreement were to:

- Install the "Equipment" in a careful and considered way, following best working practices.
- Carry out a gas safety test and power-flush of the existing heating system and radiators, advising of any leaks.
- Install a programmable room thermostat and thermostatic radiator valves where required.
- Dispose of the old boiler.

The "Equipment" was described in the agreement as *"...a Grade A condensing central heating boiler and any ancillary equipment required for the optimum performance of the boiler including but not limited to a magnetic and limescale filter, but expressly excluding a programmable room thermostat, thermostatic radiator valves and any additional pipework installed by the Company."*

In summary, ASG's relevant obligations under the maintenance part of the agreement were to:

- Keep the Equipment in good repair, condition and working order.
- Provide an annual service free of charge "to check the effectiveness of the Equipment".
- Furnish any and all parts, mechanisms and devices which are required to keep the Equipment in good order.

In summary, Mr and Mrs M had some obligations placed on them by this part of the agreement as well:

- Exercise reasonable care in looking after the Equipment and notify ASG of any damage.
- Not allow any third party to make repairs or modifications without written permission from ASG.
- Not to carry out any maintenance of the Equipment, or remove or replace it.

I think it's also worth me mentioning that the relevant law at the time Mr and Mrs M contracted with ASG implied a term into their agreement that ASG would carry out services with reasonable care and skill.

did ASG fail to meet any of its obligations under the supply and installation part of the agreement?

It appears to be accepted by all parties to the complaint that ASG did not carry out a power-flush when the boiler was installed. ASG has said it carried out a different kind of flush which would have given the same results, but nevertheless it didn't do what it said it would do in the agreement, which specifies a power-flush.

A power-flush is a procedure for cleaning the existing pipework and radiators in a heating system. Over time, rust, limescale and other debris can build up in the system, and a power-flush is intended to remove these. Other types of flush are designed to achieve the same end, but from the evidence I have seen it appears a power-flush is considered to be the most thorough method which doesn't involve physical removal of the radiators.

Our investigator concluded Mr and Mrs M didn't lose out because of ASG's failure to carry out a power-flush. After all, when the heat exchanger became blocked by debris this was more than three years after installation, so it could be that there was no link between the failure to carry out the power-flush and the large amount of debris later discovered in the system.

I mostly agree with the conclusions reached by the investigator. While I don't think it was acceptable for ASG to carry out a less thorough type of flush than it had agreed to do, there's not enough evidence to show that this was the *primary* cause of the debris problems some years later, although I think it's possible this could have contributed. I think there's a more likely primary cause of the debris problems which I'll explain later.

I also note the installation, including power-flush, seems to have been free of charge on the agreement. So even though the kind of flush carried out by ASG appears to have been cheaper than a power-flush, I can't conclude this means Mr and Mrs M have paid more than they should have.

did ASG fail to meet any of its obligations under the maintenance part of the agreement?

the magnetic filter

When Mr and Mrs M had problems with the boiler, the magnetic filter was found to be completely full. Magnetic filters are typically fitted on the return pipe to a boiler and are designed to capture debris which may be in the system, preventing it from entering the boiler. This is the same kind of debris that blocked the heat exchanger.

Like any filter, a magnetic filter can become blocked by the substances it is designed to trap, meaning it can no longer work effectively. Regular maintenance of the filter by removing the trapped debris should prevent this from occurring, and the manufacturer of the filter on Mr and Mrs M's system says its filters should be cleaned annually.

It seems likely to me that the blockage in Mr and Mrs M's boiler was caused by the magnetic filter no longer working properly due to it becoming full, causing the heating system to become contaminated with debris. This debris then entered the boiler and blocked the heat exchanger. This can't be determined conclusively, but on balance it does appear to be the most likely scenario.

Mr and Mrs M say it was ASG's responsibility to clean the filter. I agree with them. The filter is listed as part of the "Equipment" on the agreement, which means ASG was responsible for it. Indeed, the fact the filter was part of the Equipment meant Mr and Mrs M were forbidden from carrying out maintenance on it. So even if the agreement didn't explicitly say the filter was ASG's responsibility to

maintain then the logical conclusion to draw from the rest of the agreement would be that this was ASG's responsibility.

ASG has said the annual service didn't cover cleaning the filter because it was really just a visual inspection and safety check. I can see how ASG could interpret the agreement in this way, but I don't think it's a reasonable interpretation.

The purpose of the annual service as set out in the agreement is to check the effectiveness of the equipment. Arguably then, it was enough at the annual service simply for ASG to check the boiler and filter, and *report* on its effectiveness. But the agreement also says ASG will keep the equipment in good repair, condition and working order. So if, having checked the equipment, it was found *not* to be in good repair, condition or working order, I would have expected ASG to take action to put this right. This would have included cleaning a magnetic filter that was becoming blocked to the point that its effectiveness was impaired or would likely become impaired before the next service.

ASG has said the blockage of the filter was caused by debris from Mr and Mrs M's system, and it was Mr and Mrs M's responsibility to make sure the system didn't affect ASG's equipment. I don't think ASG can fairly put the blame on Mr and Mrs M for the filter becoming blocked. The filter was *intended* to capture the debris from Mr and Mrs M's system to prevent it from becoming contaminated. And the filter required periodic maintenance. Mr and Mrs M were not allowed to do this themselves and the agreement – fairly interpreted – made this ASG's responsibility.

Bearing in mind what I've said above, I think ASG should have checked the magnetic filter at the annual services, and cleaned it before debris could damage the boiler. It failed to do so, resulting in debris blocking the heat exchanger and Mr and Mrs M incurring a call-out fee which they shouldn't have.

Mr and Mrs M also had to have their system power-flushed after the boiler was repaired, to remove the debris from the system. ASG's said that Mr and Mrs M's radiators and pipework may be in poor condition, and this is the source of the debris. Mr and Mrs M have said this isn't true and none of their radiators are more than 10 years old, but in my view even if they were in poor condition the system would not have become so contaminated if ASG had maintained the filter as it should have done. It seems likely to me that a level of debris requiring a power-flush to put right would not have built up had the filter been properly maintained or a more thorough flush carried out on installation. So I think ASG should cover the cost of the power-flush as well.

the expansion vessel

A few weeks after ASG carried out its annual service, the expansion vessel was found to be flat when the manufacturer's engineer investigated the problems with the boiler. ASG says its engineer had re-pressurised it at the annual service but hasn't explained how it could have become flat in such a short space of time. It's provided a photo which it says shows the work was done, but I don't find this very persuasive. There's nothing to show it was taken in Mr and Mrs M's house, and Mr and Mrs M have said they don't think it was because there are items in the photo which they do not recognise.

In any case, even if ASG's engineer did re-pressurise the expansion vessel, I would not have expected it to be flat within a matter of weeks. This suggests that the re-pressurisation wasn't carried out properly, or there was some other fault which caused the vessel to lose pressure. I've not heard about any problems with the vessel since the manufacturer's engineer visited, so it seems most likely ASG's engineer either didn't carry out the work or didn't do it to a satisfactory standard.

Our investigator thought that ultimately this hadn't had an impact on Mr and Mrs M because the issue was resolved during the later call-out, which he was already recommending they receive a refund for. I agree Mr and Mrs M haven't suffered any additional financial loss, although ASG's failings when it has come to performing the maintenance part of the contract are things I've thought about when determining what level of compensation is fair.

customer service

Mr and Mrs M have mentioned how unhappy they are at the general customer service they've received from ASG over the course of the agreement, especially when they've spoken to staff on the phone.

ASG hasn't provided call recordings, but it has sent this service some notes of the conversations it's had with Mr and Mrs M. Not all of these are very detailed but some of them do appear to support Mr and Mrs M's account of events. For example, on one occasion I can see that a member of staff put Mr M on hold and then hung up on him, apparently because Mr M was complaining and he wasn't sure how to handle the call. Notes of other calls suggest ASG had taken a dismissive attitude when Mr and Mrs M reported issues, and was quick to assume that any problems were not its responsibility.

This is consistent with the position and approach ASG has adopted throughout the complaint, and I'm inclined to accept Mr and Mrs M's account of their conversations. I agree the level of service has been poor and this has caused Mr and Mrs M ongoing frustration and annoyance.

putting things right

ASG hasn't met its obligations under its agreement with Mr and Mrs M. It's failed to maintain the magnetic filter, leading to debris contaminating the heating system and damaging the boiler. As a result, Mr and Mrs M have had to pay for an engineer to come and clean the damaged parts, and for the system to be flushed. ASG has also provided a generally poor standard of service in carrying out the maintenance side of the agreement, and when responding to issues reported by Mr and Mrs M. This has caused Mr and Mrs M to experience frustration, annoyance and a loss of confidence in the company.

To put things right, I intend to direct ASG to do the following:

- Refund the call-out charge of £120 which it added to Mr and Mrs M's direct debit. 8% simple yearly interest* should be added to this refund, calculated from the date the direct debit was taken, to the date the refund is given.
- Reimburse Mr and Mrs M the £540 they paid to have the system power-flushed, along with 8% simple yearly interest* calculated from the date Mr and Mrs M paid for the power-flush, to the date the amount is reimbursed to them.
- Inspect and clean the magnetic filter at the 2019 and all subsequent annual services remaining under the agreement. If the 2019 service has already been carried out then ASG must either return within four weeks of a final decision being accepted, to inspect and clean the filter, or cover the cost to Mr and Mrs M of having another heating engineer carry out this work.
- Pay Mr and Mrs M £250 compensation to reflect the frustration and annoyance caused by its failure to meet its responsibilities under the agreement, and the poor level of customer service it's provided to Mr and Mrs M. ASG must pay the compensation within 28 days of the date on which we tell it Mr and Mrs M accepts a final decision. If it pays later than this it must also pay interest on the compensation from the date of a final decision to the date of payment at 8% a year simple.

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

my provisional decision

For the reasons explained above, I intend to uphold Mr and Mrs M's complaint and direct A Shade Greener (Boilers) LLP to take the actions set out in the "putting things right" section. I now invite both parties to the complaint to comment – they should make sure anything they want me to consider reaches me by 29 July 2019.

Will Culley
ombudsman