

complaint

Mrs S has complained that A Shade Greener (Boilers) LLP ("ASGB") failed to carry out a power flush on her boiler and as a result it is now filling with debris and not working properly.

background

Mrs S took out a conditional sale agreement from ASGB for a boiler, which was installed by ASGB, in 2014. The boiler was fitted in a property which Mrs S rents out to individual tenants.

In 2016 Mrs S experienced problems with her boiler that ultimately resulted in a complaint being brought to this service and ASGB was told it needed to carry out repairs to the boiler at no cost to Mrs S. ASGB duly arranged for an engineer to carry out these repairs in March 2017.

In late July 2018 Mrs S contacted ASGB again to say she had no hot water and the boiler wasn't working properly. The person she spoke to explained that if debris was found in her system the cost of repairs wouldn't be covered under the terms of her sales agreement. A week or so later, in early August ASGB arranged for an engineer to attend Mrs S' property to inspect the boiler. The engineer found debris present and so Mrs S was told the issue was not covered under the sales agreement and she was charged £232.80 for the repairs.

Mrs S is adamant she should not be held liable for the cost of the repairs. She says that no power flush was carried out when the boiler was installed and believes the problem with the debris in her boiler is the result of ASGB failing to install and maintain her boiler properly. ASGB strongly refutes this and says the debris found in the boiler is the result of a fault within the system itself and not because of an inherent fault in the boiler or the consequence of the boiler not being fitted properly in the first instance. It has said that under the terms and conditions of the sales agreement Mrs S is responsible for the maintenance of the pipes and radiators and so it doesn't believe it should be held liable for the repairs to her boiler.

I issued two provisional decisions on this complaint on 19 September 2019 and 24 October 2019. In them I found that it was more likely than not that the issues Mrs S is currently experiencing with her boiler were result of ASGB not correctly installing the boiler in 2014.

I directed ASGB to refund Mrs S the money she was charged for repairs in August 2018 as well as the cost of obtaining an independent engineers report for this investigation. I said that ASGB should cover the costs of a full inspection of the boiler and any subsequent cleaning, repair or replacement of parts contaminated by debris or sludge. I also suggested that ASGB pay Mrs S £300 compensation in recognition of the trouble and upset it had caused her in how it had handled her complaint both before and since it has been with this service.

Mrs S responded to my second provisional decision by confirming that she had already sourced two independent engineers reports estimating the cost of the repairs and that she would pass these onto ASGB so it could choose, which of the two, it would arrange to come and repair her' boiler.

ASGB responded to the second provisional decision saying that it would abide by the findings, despite not agreeing it was responsible for the problems Mrs S has experienced with her boiler. It said that once the repairs were made to the boiler it would no longer accept

any liability for it. It confirmed Mrs S has ended her agreement with ASGB and that going forward all future maintenance would be her own responsibility.

As neither Mrs S nor ASGB provided any new evidence for me to consider, or objected to any of the recommendations set out in the second provisional decision, I see no reason to change my findings. I have set out these out again below.

my findings

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

Mrs S acquired the boiler under a conditional sale agreement. Under this type of agreement ASGB is the supplier of the goods and is responsible for fulfilling its obligations as set out in the agreement, and any terms which are implied by relevant law.

In deciding what's fair and reasonable I've taken into consideration – amongst other things – the relevant law and in particular the Sale of Goods Act 1979 and also the Supply of Goods and Services Act 1982. Without going into great detail, the relevant effect of these pieces of legislation is that any goods ASGB supplied under the agreement needed to have been of satisfactory quality, and any services would need to have been carried out with reasonable care and skill.

Mrs S has provided us with three separate reports from three independent engineers. These are dated February 2017, July 2018 and September 2019. All three reports indicate that while the water in the boiler was clean, it seems unlikely that sludge or debris circulating within the system has caused the most recent problem. It seems more likely that the present problem goes back to the power-flush which occurred on installation.

In its response to the first provisional decision ASGB strongly disagreed with the findings I made. It gave a very detailed explanation of what should happen when a boiler is installed and the guidelines it says it would've followed. It alluded to a service that was carried out in October 2015 which it felt showed the system was working properly. But this alone isn't enough to disprove the findings of the three other engineers. Especially given they all agreed the water was running clean. It also alluded to the fact that neither of the first two engineers commented on the magnetic filter or carried out any water sampling. I can clarify that the final report did indicate that the magnetic filter was very dirty and recommended a full power flush in order to clean it out.

On balance, it appears installation was not carried out with reasonable care and skill, and caused debris or sludge to be deposited in various parts of the boiler when it was new. The plate heat exchanger was replaced after it became blocked the first time, but no other parts of the boiler (except for some hoses) were inspected, cleaned or replaced, meaning these could still have been contaminated with sludge. So if sludge was present in other parts of the boiler upstream of the plate heat exchanger, it seems possible this could have become dislodged over time and caused a blockage further on. While it's not possible to know this for sure, given the water in the system is clean it appears unlikely the sludge could have come from anywhere else. This means I don't find it very probable that any failure by Mrs S to maintain the system caused the most recent blockage. My conclusion, based on the available evidence, is that the debris which blocked the plate heat exchanger most recently was left over from the power-flush on installation.

ASGB had a responsibility to carry out the installation (which included the power-flush process) with reasonable care and skill. In my view it failed to do so, leading to blockages of the boiler which I think it was responsible for putting right. Although I accept ASGB took some action to replace a part and clean some hoses after the previous complaint, I'm not convinced this has resolved the underlying issue.

So despite the detailed response provided by ASGB I've not seen any new evidence from them to convince me that the issues Mrs S is having with her boiler are not the direct result of it not being installed properly in the first instance. And I find it extremely troubling that after receiving the first provisional decision, which indicated that the complaint would be upheld and redress awarded, ASGB contacted Mrs S directly to try to persuade her to drop her complaint with this service, thus rendering any suggested redress unenforceable.

In order to put things right this time, ASGB needs to put Mrs S, as far as possible, back in the position she'd have been in had the installation been carried out with reasonable care and skill. As the relationship between ASGB and Mrs S has broken down ASGB should cover the cost of getting an independent engineer to inspect the boiler for any remaining debris or sludge, and repairing/cleaning (if possible) or replacing any affected parts. It should also refund the additional charges of £232.80 (plus interest) it made to Mrs S in relation to the most recent repairs, and refund the £45 (plus interest) cost of her the second independent engineer's report.

Mrs S has had the boiler inspected and has received quotes from two independent engineers for the work that needs to be completed. She should present these quotes to ASGB so it can decide which one it will pay. ASGB will also need to pay for the cleaning, repair or replacement of any parts as deemed necessary by the heating engineer due to the build-up of debris or sludge.

Finally Mrs S has told us of the stress this entire process has caused her and I agree ASGB has behaved very poorly in the way it has dealt with Mrs S. It has behaved at times in a threatening manner towards Mrs S and has attempted to undermine the complaint process by, for example, suggesting it will take Mrs S to court unless she withdraws her complaint. It's also provided a generally poor standard of customer service to Mrs S throughout its dealings with her. In the circumstances, taking into account the level of distress caused to Mrs S by ASGB's actions, I think it should pay her £300 compensation

My final decision

For the reasons outlined above, I uphold Mrs S's complaint and direct A Shade Greener (Boilers) LLP to:

- Refund the August 2018 fee of £232.80 along with simple interest at 8% per year. The interest to run from the date of payment to the date of settlement.
- Refund the £45 Mrs S paid for an independent engineer's report. This should also include simple interest at 8% per year. The interest to run from the date of payment to the date of settlement.
- Cover the costs of a full inspection of the boiler and any subsequent cleaning, repair or replacement of parts contaminated by debris or sludge.
- Pay Mrs S £300 compensation for the distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 December 2019.

Karen Hanlon
ombudsman