

complaint

Mrs S and Mrs S complain about a boiler that was supplied to them under a conditional sale agreement with A Shade Greener (Boilers) LLP ('ASG').

background

Mrs S and Mrs S entered into a regulated conditional sale agreement with ASG on 24 May 2016 for the supply and installation of a domestic boiler. At the same time Mrs S and Mrs S entered into a separate boiler maintenance and service agreement with ASG for annual services and a 365 day repair call out service.

In October 2017 Mrs S and Mrs S experienced issues with intermittent hot water and had to call ASG out to fix it. ASG sent a manufacturer engineer who discovered the plate heat exchanger in the boiler was blocked. This was replaced at no cost to Mrs S and Mrs S.

In March 2018 Mrs S and Mrs S experienced the same problems again and a similar fix was required – again at no cost to them. The engineer that attended also noted a 'reverse polarity' issue with the boiler's electronics.

Mrs S and Mrs S complained to ASG after this that the boiler hadn't been installed to the appropriate standard. ASG responded to Mrs S and Mrs S to say the problems they had experienced were caused by a build-up of debris in the boiler which had come from their heating system. It said this was not a fault with the boiler. So, it said the repairs were not covered under the service and maintenance agreement or the manufacturer's warranty – and were only not charged as a gesture of goodwill.

ASG also said it wasn't responsible for the installation as this was carried out by a separate company but in any event a flush carried out on Mrs S and Mrs S's heating system on installation was only guaranteed for a year. It said Mrs S and Mrs S would need to pay for someone to carry out a power flush of their heating system if they wanted to stop the problem from re-occurring.

The same thing happened again in May 2018. Mrs S and Mrs S said they continued to experience issues with their hot water until they engaged a third party engineer to fix the boiler in August 2018 at a cost of £359.89.

Our investigator thought Mrs S and Mrs S's complaint should be upheld. She said she didn't think ASG had carried out the installation of the boiler with reasonable care and skill and this resulted in the problems that Mrs S and Mrs S had to pay to have fixed. She recommended that ASG pay Mrs S and Mrs S the cost of fixing their boiler in August 2018 and pay for the cost of a power flush on their heating system.

ASG did not agree with the investigator. It said, in summary:

- It was unfair to say a power flush should have been completed on installation instead of a chemical flush without knowledge of plumbing and flushing.
- There is no evidence Mrs S and Mrs S maintained their heating system in accordance with the requirement in their agreement saying they must do this.

ASG also copied an extract from a trade association website explaining that not even power flushing a heating system is guaranteed to remove all debris from it.

As no agreement was reached the complaint was passed to an ombudsman for a decision.

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 and Mrs S have said the problems they experienced so soon after installation show that ASG didn't install their boiler to the appropriate standard. ASG says the installation was completed to the manufacturer's standards.

ASG has also previously said it isn't responsible for the installation of the boiler because another company carried it out. But the conditional sale agreement was between ASG and Mrs S and Mrs S. And within the agreement it very clearly states that ASG will supply AND install the boiler. It doesn't matter if another company actually carried out the installation because ASG had a contract with Mrs S and Mrs S to install the boiler. So ASG was responsible for the installation.

There was an express term in the conditional sale agreement that *'the installation will be carried out in a professional manner with best working practices followed'*.

I must also take account of relevant legislation when deciding what is fair and reasonable in this complaint. The Consumer Rights Act 2015 ('CRA') implied a term in the agreement that any service provided would be carried out with *'reasonable care and skill'*. The installation of a boiler is a service.

I find both the express and implied terms to mean broadly similar things. So I've considered whether ASG met those standards when deciding what's fair in this case. If I find it didn't, I'll also consider whether Mrs S and Mrs S have lost out as a result.

But first I've thought about the cause of the problems Mrs S and Mrs S had with their boiler. I've studied the breakdown reports carried out by the manufacturer in October 2017 and March 2018 and the one completed by the engineer that attended Mrs S and Mrs S's property in August 2018. All three reports refer to a blocked plate heat exchanger. But none of the reports give a reason for the blockage.

ASG has said that it is 'extremely likely' the blockage was caused by debris from Mrs S and Mrs S's heating system. I don't think this is clear and evidence shows there are other reasons a heat exchanger can become blocked. But in this particular case, for reasons I'll expand on below, it does seem likely the blockage was caused by debris from Mrs S and Mrs S's heating system.

I've considered whether I think the blockage was the result of the installation not being carried out with reasonable care and skill.

A good starting point when deciding what reasonable care and skill looks like in this case is the installation manual for the boiler. This says that the property's heating system must be *'thoroughly flushed'* before installation.

ASG says it carried out a 'chemical flush' of Mrs S and Mrs S's heating system using products 'fully endorsed and recommended' by the boiler's manufacturer. A chemical flush uses gravity to empty and refill the heating system adding appropriate chemicals to suspend, disperse and remove accumulated materials. ASG says this kind of flushing method was appropriate for the system it was fitting in Mrs S and Mrs S's property. It has provided us with the Domestic Chemical Water Treatment Manufacturers Association *code of practice for chemical cleaning and inhibiting of domestic hot water central heating systems* which explains an installer '*has a choice of cleaning methodologies available which will meet the requirements of the (relevant) Building Regulations.*

However, Mrs S and Mrs S have said their property has suffered with sludge and debris in the heating system before and this broke their previous boiler. Mrs S and Mrs S said they acquired a new boiler through ASG because they had just lost a boiler and needed one quickly, but with limited cash to pay for one outright. They said they told ASG about the reason their previous boiler broke before entering the conditional sale agreement and were told a thorough flush would be completed to remove this. I find their testimony in this respect to be plausible and it seems likely to me given the previous issues they'd experienced that they would have made ASG aware of the reason their previous boiler broke.

Mrs S and Mrs S have also said that in October 2017 they were told by the manufacturers engineer that their heating system would need to be power flushed to stop the heat exchanger from becoming blocked again. This has been backed up by what ASG has said in its correspondence with Mrs S and Mrs S.

Evidence suggests a power flush is the most thorough method of flushing a heating system. Indeed the code of practice supplied to us by ASG confirms a power flush can improve the efficiency and efficacy of a heating system clean.

So, weighing things up, it seems ASG were aware that Mrs S and Mrs S's heating system had issues with sludge and debris previously and may have needed a more thorough flush. And just 15 months after installation, the manufacturers own engineer recommended that their system needed power flushing to prevent the problem happening again. Given this short period of time, it seems likely to me that Mrs S and Mrs S's heating system required a more thorough flush at the time of installation. I don't think Mrs S and Mrs S would reasonably have expected to need to flush their heating system again so soon after one had been carried out.

I recognise (as ASG has pointed out) that power flushing is not guaranteed to remove all debris from a heating system. But it seems likely from the evidence that had a more thorough flush been carried out on their particular system, Mrs S and Mrs S would not have experienced the problems they did so soon after installation. Mrs S and Mrs S have not experienced the issues again since their boiler was fixed in August 2018 so the problem does not seem to be an ongoing one. This suggests there was a build-up in the heating system that was not properly removed at installation.

ASG says it has fixed the reverse polarity issue with the electronics. It hasn't provided any record of this such as a breakdown report or job sheet. But I've not seen anything to suggest the problem wasn't fixed and correspondence does suggest that an engineer attended Mrs S and Mrs S's property specifically to fix the issue. That being the case it looks to me that the problem was most likely one that was caused on installation, further evidence that it was not carried out to the appropriate standard.

So, having considered everything, I find in this particular case that ASG didn't complete the installation of the boiler with reasonable care and skill – in breach of the implied term in its agreement with Mrs S and Mrs S.

ASG has said Mrs S and Mrs S are in breach of their obligation in the agreement to maintain their central heating system by allowing debris to pass in to the boiler. I don't think they were – seeing as the problem happened so soon after installation and they wouldn't reasonably have expected to have to flush their heating system again. But even if they were, I don't think this outweighs ASG's original obligation to install the boiler with reasonable care and skill.

Mrs S and Mrs S have suffered a loss as result of this as they had to pay an engineer to fix the boiler in August 2018 due to a blocked heat exchanger. I recognise this was over two years after the boiler was installed. But the problem first surfaced in October 2017 and Mrs S and Mrs S were told then that a power flush would be required to stop it happening again. So, it seems likely the problem in August 2018 was the same as the one in October 2017 seeing as the heating system had not been power flushed. I find it fair that ASG pay Mrs S and Mrs S the cost of the repair in August 2018.

I recognise that Mrs S and Mrs S's agreements contain provisions that a third party cannot carry out work on the boiler. But I don't think it was unreasonable for Mrs S and Mrs S to use a third party engineer given the issues they were having with ASG. In the circumstances it would not be fair for ASG to penalise Mrs S and Mrs S under either of their agreements because of this and it should ensure this does not happen.

I've given consideration also to what the law says about what Mrs S and Mrs S are entitled to. The CRA states that where a service has not been performed with reasonable care and skill, a consumer has a right to request repeat performance to the extent necessary to complete performance in conformity with the contract. In this case I think this would mean carrying out a more thorough flush of Mrs S and Mrs S's heating system – as this is what should have happened on installation.

I think it's fair in this case that Mrs S and Mrs S get what they are entitled to under the law. While they haven't encountered the same problem with the boiler since it was fixed in August 2018, an expert still recommended that the heating system is power flushed in 2017 and this hasn't been done since. ASG should therefore arrange for Mrs S and Mrs S's heating system to be power flushed at no cost to them, should they so wish, at a time that is convenient for them.

It will have been inconvenient for Mrs S and Mrs S to keep calling out an engineer and very inconvenient to make do with intermittent hot water for as long as they did. I find ASG should pay them compensation of £250 for this.

my final decision

For the reasons I've explained above, my final decision is that I uphold Mrs S and Mrs S's complaint. To put things right A Shade Greener (Boilers) LLP must:

- Pay Mrs S and Mrs S the £359.89 cost of having the boiler repaired plus interest at 8% simple per year from the date it was paid until the date of settlement.

- Arrange for Mrs S and Mrs S's heating system to be power flushed at no cost to them should they wish.
- Pay Mrs S and Mrs S compensation of £250 for distress and inconvenience.

*If A Shade Greener (Boilers) LLP considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs S and Mrs S how much it's taken off. It should also give Mrs S and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

** A Shade Greener (Boilers) LLP must pay this compensation within 28 days of the date on which we tell it Mrs S and Mrs S accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% per year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mrs S to accept or reject my decision before 9 February 2020.

Michael Ball
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