

The complaint

Mr W is unhappy with how A Shade Greener (Boilers) LLP (ASG) carried out its obligations to maintain a boiler it supplied to him under a conditional sale agreement.

What happened

In 2013, Mr W entered into a regulated conditional sale agreement with ASG for the supply, installation and maintenance of a domestic boiler. The agreement was for just over £8,800 with around £4,100 being for the actual boiler and the remainder being for its maintenance and servicing. The agreement was to be paid back over 14 years.

In September 2020, Mr W told ASG about a problem with the boiler. ASG sent an engineer out to look at it. He said that the boiler's condensate pipe was backing up as the waste pipe it drained into was blocked. ASG told Mr W this wasn't a problem with the boiler and wasn't covered under the maintenance agreement. As ASG classed this as a non-warranty call out, it also charged Mr W £120 for the engineer's visit. He wasn't happy with this situation, so he complained.

ASG told him the blocked waste pipe wasn't part of the boiler equipment and Mr W would need to rectify the problem at his own cost. It repeated that he would be charged £120 for the engineer's visit. Mr W then got a third-party gas safe engineer to look at the boiler. He told ASG that the engineer had unblocked the condensate pipe and had said that it hadn't backed up into the boiler. He also sent ASG an email from the engineer which stated he believed the plate heat exchanger was faulty and found two error codes.

ASG replied stating that it had requested for Mr W's waste pipe to be unblocked, and this didn't need a gas safe engineer. It went on to say that as it hadn't given its consent for the third-party engineer to work on the boiler, this meant the boiler was now out of warranty and Mr W was now solely responsible for the servicing and maintenance. ASG told him that all his further payments would now go towards the cost of the equipment.

Mr W wasn't happy with this. So, he brought his complaint to our service. Mr W told us the third-party engineer told him the boiler was beyond economic repair, so he got a new boiler fitted. He told us he wants ASG to: cancel all charges; refund the cost of the new boiler; and, refund the cost of the third-party engineer's inspection and advice.

One of our investigators looked into this. In brief, he thought: ASG's contract didn't allow it to charge Mr W £120 for the call out fee; ASG should pay Mr W £175 as it hadn't made it clear what he needed to do resolve the problems with the boiler; and, as Mr W no longer had the ASG boiler, it should write off any remaining amount due under agreement for servicing and maintenance.

ASG didn't agree with this. Again in brief, it said: the call out fee wasn't hidden and was discussed with Mr W before its engineer came out; it had already removed the maintenance and servicing side of the contract; and it doesn't believe Mr W has any intention of making payments so it's unfair for ASG to pay him any sort of compensation.

As the matter remains unresolved, it's been passed to me for a final decision.

What I've decided – and why

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. I'll explain why. First, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the key issue here: given the problems that happened with Mr W's boiler, does ASG need to do anything to put things right?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual point or argument – only those that I'm satisfied are central to me reaching what I think is a fair outcome. Our rules allow me to do this. This reflects the informal nature of the Financial Ombudsman Service as a free alternative to the courts.

When ASG's engineer visited Mr W's property in September 2020, he reported that the problem wasn't with the boiler, it was due to a blocked waste pipe under the sink. ASG's position is that this isn't part of its equipment, which in turn means it isn't responsible for fixing this problem.

I've looked at Mr W's agreement with ASG. I can see this shows that ASG was responsible for the maintenance of the boiler, and that it was down to Mr W to maintain all other pipework, which would include the waste pipe. So, I can understand why ASG then told him he would need to have this rectified at his own cost.

But I think ASG should have been clearer in its communications with Mr W. On 10 September 2020, ASG told Mr W the water from the condensate pipe had nowhere to go due to the waste pipe being blocked. It went on to say Mr W would now need to rectify any faults due to the blockage at his own expense. Shortly after this, on the same day, Mr W reported that his hot water wasn't working properly. The available evidence doesn't show ASG provided any further clarification about what he now needed to do.

So, I can understand why Mr W felt he had to instruct his own gas safe engineer to look at the boiler. He'd told ASG his hot water wasn't working, and at that time he'd been told he needed to rectify any problems due to the waste pipe blockage at his own expense. I don't think ASG gave Mr W clear enough guidance at this point on what his options were to resolve the issues he was having. I say this as it seems unlikely that simply clearing the blocked waste pipe would have resolved the issue with his hot water.

I've also thought about Mr W's response to this. As above, given ASG's lack of clarity over what to do, I think it was fair and reasonable for him to get a gas safe engineer to look at the boiler. I've looked at the email from this engineer. The email states the engineer believed the plate heat exchanger to be faulty, that there were two error codes and two sensors were faulty.

While I accept this email shows there were problems present with the boiler, I'm not satisfied it shows the boiler was beyond economic repair. In my experience, the faults were with items that could be replaced. The available evidence doesn't support Mr W's testimony that the boiler couldn't be repaired and needed replacing. Given this, I don't think it's fair and reasonable to ask ASG to pay for the replacement boiler. Also, Mr W hasn't provided any evidence that he had to pay for the engineer – and if so, how much – to inspect the boiler and identify any problems. So, I don't think it's fair and reasonable to ask ASG to pay anything for this.

But I do think ASG needs to do something to compensate Mr W for failing to communicate clearly with him about what he needed to do when the boiler problems arose. Normally, I would direct ASG to repair the boiler. But, as Mr W has already replaced it, this isn't possible. So, in the circumstances of this individual complaint, I'm satisfied ASG should pay Mr W £175 for the distress and inconvenience he was caused by the lack of clear communication about how to resolve the issue with his hot water.

Also, as Mr W no longer has the boiler, this means ASG can no longer maintain and service it. So, if it hasn't already done so, ASG should remove any outstanding balance from Mr W's account that relates to the maintenance and service part of his agreement.

I'll now turn to the matter of the £120 call out fee. I've looked at the contract between Mr W and ASG. Having done so, I'm not satisfied ASG had any contractual basis for charging such a fee.

I accept ASG discussed the fee with Mr W before the engineer's visit and that this wasn't hidden from him. I can also understand why ASG may want to charge for these types of visit. But if that's the case, there was nothing stopping ASG from providing for this when it drew up the contract. But it didn't. Instead, Mr W contracted with ASG on the terms set out in the contract he signed in 2013. Whether or not it was ASG's intention to include such a clause for non-warranty call outs, it wasn't done. I'm not satisfied it's fair and reasonable for it to then try to introduce a new clause into the contract to cover this. So, I think the call out fee should be waived, or refunded if it's already been paid by Mr W.

Finally, I can see that prior to ASG's engineer visiting Mr W's property, it gave him the option of either ending his agreement early with nothing further to pay or to have an engineer visit. It can be seen from the above that Mr W chose the latter.

All I would add here is that I'm satisfied ASG was able to make this offer at its own discretion. It was an offer it was perfectly entitled to make. If Mr W had chosen to end the agreement early, I would have expected ASG to honour this. But he didn't. It follows that when Mr W chose to have the engineer come out, ASG was also then entitled to withdraw the offer to end the agreement early.

Putting things right

For the reasons given above, I'm satisfied ASG should:

- Remove the £120 call out charge from Mr W's account. If he's already paid anything towards this charge, this should be refunded together with 8% annual simple interest from the date of the payment to the date it's refunded;
- Remove any outstanding balance relating to the maintenance and service part of Mr W's agreement if it hasn't already done so; and
- Pay Mr W £175 for the distress and inconvenience he's been caused.

My final decision

My final decision is that A Shade Greener (Boilers) LLP must take the action I've set out above.

This final decision marks the end of the Financial Ombudsman Service's review of this complaint. This means we are unable to consider the merits of it any further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 July 2022.

John Miles

Ombudsman