

The complaint

Mr and Mrs H have complained about their home insurer AXA Insurance UK Plc because it won't pay a project management or contingency fee as part of a cash settlement for insured repairs to be done at their home.

What happened

Mr and Mrs H's home suffered subsidence. They weren't happy with how AXA dealt with their claim. They complained to the Financial Ombudsman Service and later issued court proceedings against AXA seeking compensation for the upset caused.

In 2023, the parties decided to cash settle the repair work. Mr and Mrs H presented three quotes and AXA paid against the lowest, less the project management and contingency fees detailed therein. In a final response dated 1 August 2023 AXA said it didn't think the reinstatement programme warranted project managing – and if it did it would usually only pay at 10%, not the 15% quoted. It said it would consider paying for a project manager if a suitably qualified person, independent of the reinstatement contractor, was appointed. AXA said it wasn't clear if the contingency fee would actually be charged – so it wouldn't pay that upfront. However, it would consider making a payment if Mr and Mrs H showed it their contractor was expecting this to be paid.

Mr and Mrs H felt AXA was being unfair and unreasonable. They said the settlement was meant to be based on the costs they would incur for the work – and with the lower quote including both a project management and contingency fee, these were sums they would have to pay. They said the lowest quote had given a comprehensive breakdown and not absorbed costs like this within the general scope of work. Mr and Mrs H said project management was essential to avoid further delays. Regarding the contingency they said the lowest quote had included this to address the “variability in labour and material costs and was to be applied as the contractor saw fit i.e. not specified.”

Our Investigator thought AXA should be paying the project management fee at 15%, subject to an invoice for the same. But, bearing in mind the quote said the contingency fee was for “unforeseen” works, she felt it was reasonable that AXA would only consider paying this subject to Mr and Mrs H showing they had to pay it – with it being reasonably entitled to enquire as to what it was being charged for.

AXA agreed. Mr and Mrs H objected.

They said if they'd known the breakdown of costs would be used against them, they wouldn't have allowed any of the contractors to add sums against each area of work and AXA wouldn't have been able to cherry-pick what not to pay. They said a cash settlement was meant to allow them to complete work as they see fit – AXA shouldn't be seeking to control that outlay. The purpose of obtaining the quotes, they believed, was to determine the quantum of the cash settlement, and AXA had chosen the lowest of the three quotes so it should pay in-line with the costs detailed. Meaning they shouldn't be put to proving how the sums are to be spent, it's their choice how they go about fulfilling the project. They said they'd explained to AXA that the contingency did not relate directly to unforeseen elements of the work – it was more to cover inflation and any cost differences which may occur. So they said it's not possible to provide specific invoices for the contingency sums spent. They said their contractor wouldn't be prepared to invoice AXA directly but they will raise an invoice to AXA if it will agree to pay it. They said they believe a court would understand and appreciate what a cash settlement means. Their complaint was referred for an Ombudsman's consideration.

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 find I'm of the same view as our Investigator, for the same reasons. I know this has been a difficult claim for Mr and Mrs H and that this last part of it has likely been frustrating. But I note they've chosen to place the concerns about claim handling and compensation before the courts. So I won't comment further here on any upset which may have occurred.

I think AXA should pay the project management fee detailed on the quote. I'm glad it's revised its position in this respect – it was happy to settle for Mr and Mrs H's cost for getting the insured work done and that sum has been quoted for that purpose. But as Mr and Mrs H have pointed out – that has been quoted by this contractor because that is how they choose to work. It's not something which every contractor would charge. As they've also pointed out the cash settlement leaves them free to fulfil the project how they wish. So I do think it's reasonable that AXA wants to see an invoice for this cost – which would usually be an invoice from the contractor to their client (Mr and Mrs H) – showing that Mr and Mrs H have incurred such a cost in getting the insured work done.

AXA agreeing to cash settle does not just mean it should open a blank cheque book for payment of whatever sum is created and placed before it. AXA reasonably needs to know that any costs it is being asked to settle for, are costs associated with the claim, with the insured repairs which it is reasonably liable for. For that reason most insurers won't pay costs such as VAT or contingency sums upfront.

As Mr and Mrs H have pointed out, the costs which they think might fall under the cost label of 'contingency' aren't specified. And the quote actually details the contingency sum as being for "unforeseen additional repair work etc". That is usually what a contingency sum is added for – to give some leeway on a quote whilst preventing the 'bottom-line' sum from increasing.

But AXA is liable for covering the cost of insured work – work which has, so far, been unforeseen can't have been validated as necessary insured repairs. Even where a cash settlement is made it is quite normal for an insurer to agree in principle to considering other extra costs/work as it arises, subject to work pausing so it has chance to consider that. As long as an insurer carries out that consideration reasonably, it's likely that wouldn't be seen as unfair. What wouldn't be fair is for AXA to pay £12,000 up front for work which may not come to pass or, if extra work is done, it has not had a chance to consider its liability for.

Putting things right

I require AXA, subject to proof of outlay being provided, of Mr and Mrs H incurring a project management fee, to reimburse their outlay. It's liability in this respect will be for a project management fee of up to 15%, if they've incurred a project management fee of more than 15%, it's liability will be limited to just 15%.

My final decision

I uphold this complaint in part. I require AXA Insurance UK Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 11 January 2024.

Fiona Robinson
Ombudsman