

The complaint

Ms O is unhappy with the way Monzo Bank Ltd ('Monzo') handled her claim for a refund of a payment she made using her Monzo debit card.

What happened

In January 2022, Ms O paid a business I'll call 'B' £2,943.36 to have bariatric surgery overseas. She used her Monzo debit card to pay for it.

Ms O says it was agreed she would have a particular procedure. However, she says the surgeon didn't attempt this procedure and, in her own words, 'botched the surgery'. Ms O says the surgeon cut part of her stomach that he shouldn't have touched. This part of her stomach soon became infected and she was rushed to hospital on her return to the UK. The surgeon who performed the emergency surgery told her she could have died.

On or around 19 January 2022, Ms O asked Monzo to help her get a refund. It asked Ms O to provide some evidence to support her claim. When Monzo received the evidence, it initiated a 'chargeback'. B defended the claim and Monzo chose not to escalate the dispute to arbitration, which is when Mastercard makes a final decision.

Ms O complained to Monzo about the outcome.

In reply, Monzo said it had followed its internal procedure correctly. And, confusingly and incorrectly, it said: 'Mastercard are satisfied that the merchant have acted fairly'.

Ms O then referred her complaint to our service.

One of our investigators didn't think Monzo had done anything wrong because, based on what Monzo had said, she thought it had initiated a chargeback and Mastercard had ruled in B's favour.

Ms O asked that an ombudsman make a final decision.

I issued a provisional decision on 28 November 2022.

I first explained the chargeback process:

'A 'chargeback' is a way for a debit card provider to reclaim money from the supplier's bank when a consumer doesn't get the goods or services she paid for. It isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The process is subject to the rules of the scheme – which, in this case, are set by Mastercard – and a strict criteria and time limits apply.

Put simply, the process is this:

- The consumer contacts her debit card provider to dispute the transaction.

- If the consumer's reason for disputing the transaction falls into one of the permitted categories (and she can provide some supporting evidence), the card provider will usually initiate a chargeback.
- The supplier's bank is notified, and it then notifies the supplier. The supplier can accept or defend the chargeback.
- If it decides to defend the chargeback, the supplier must explain why and provide supporting evidence to show that the dispute is invalid.
- The debit card provider will consider the evidence and decide whether to accept or reject the supplier's defence.
- If the debit card provider thinks the supplier's evidence is insufficient and rejects its defence, the supplier can either accept the decision or the matter can be referred to Mastercard for it to make a final decision. This final stage is called 'arbitration'.

I then explained why, despite what Monzo said in its letter to Ms O dated 8 June 2022 – that 'Mastercard had assessed your claim, and ruled in favour of the merchant' – I didn't think Monzo had escalated the dispute to Mastercard for arbitration, and instead, had simply accepted B's defence.

As Monzo now accepts that this is what happened, I don't need to set out my reasons in the way I did before.

But I think it's worth repeating some of the observations I made about the way Monzo handled the claim:

- I said that as it didn't escalate the dispute to Mastercard, it was regrettable that Monzo had indicated it had when it wrote to Ms O on two separate occasions.
- I referred to a message Monzo sent Ms O on 17 May 2022, which said: 'We are only able to progress disputes where we can show the merchant has done something wrong i.e. they have broken their T&Cs. Unfortunately here the merchant was acting in line with their T&Cs so we haven't been able to take this further for you.' I said it wasn't clear to me what Monzo meant by this, as it had purportedly sent me all the evidence B had supplied when it defended the chargeback and there were no terms and conditions.
- I noted that the clinical evidence provided by B was in a foreign language and I said that, as Monzo hadn't provided a translation, I didn't know if it had translated any or all of the documents or how it had otherwise satisfied itself that the dispute was invalid based on this evidence.
- I said B's defence and the evidence it had provided focused on proving that the surgery took place, not that it was performed well or with reasonable care and skill. So it didn't specifically address Ms O's concerns or the reason for the chargeback.

I concluded this section of my provisional decision by saying that, in the circumstances, it wasn't clear to me why Monzo had accepted B's defence.

However, I said that, based on the evidence I'd seen at that stage, I couldn't say that if Monzo had escalated the dispute to Mastercard, it was more likely than not that Mastercard would have determined the dispute in Ms O's favour.

I explained that I'd asked Monzo to send me the evidence Ms O had provided to support her claim, and included a list of what it had sent me. I then referred to two pieces of evidence – a translation of the epicrisis report and a letter signed by the surgeon – which indicated that the surgeon had performed the procedure Ms O had paid for. I continued:

‘And it doesn’t look like Ms O provided any evidence from the surgeon who performed the emergency surgery in London, or the hospital where it was performed, to show that the surgeon [overseas] didn’t attempt [the procedure]. Similarly, it doesn’t look like Ms O provided any evidence from the London surgeon – or another suitably qualified medical practitioner – that shows that the surgery [overseas] was ‘botched’ or ‘defective’.

To be clear, I couldn’t possibly say, on the evidence I’ve seen, if Ms O had [the procedure] or another procedure [overseas] – or comment on the care and skill used during the surgery itself. Nor is that my role. Instead, I must decide whether I think Ms O has lost out because Monzo accepted B’s defence and didn’t escalate the dispute to Mastercard. I know that Ms O will be very disappointed, but I don’t think she has. In the absence of supporting evidence from a suitably qualified medical practitioner that shows [the procedure] wasn’t performed and/or that the surgery was ‘botched’, I think it’s unlikely that Mastercard would have determined the dispute in Ms O’s favour.

This is not a comment in any way on the merits of the underlying dispute between Ms O and B. Instead, it reflects the limits of the chargeback scheme, the nature of Ms O’s claim, and the evidence provided.’

I concluded my provisional decision by saying:

‘All things considered, I’m currently minded to tell Monzo to pay Ms O £300 to compensate her for the mistakes it made, which I think are likely to have caused her some avoidable distress and inconvenience at what was clearly a very difficult time. However, as I don’t think those mistakes made a difference to the outcome in this case, I’m not currently minded to tell it to pay more.’

Ms O replied to my provisional decision on 1 December 2022. She disagreed with my provisional findings, and referred me to, and then commented on, specific sections of my decision. Significantly, Ms O referred me to the section where I said: ‘...it doesn’t look like Ms O provided any evidence from the surgeon who performed the emergency surgery in London...’, and explained that she had provided Monzo with this evidence. Ms O sent me a copy of a short report from the hospital where she had the emergency surgery, and proof that she’d sent this to Monzo.

Monzo replied to my provisional decision on 14 December 2022 to say it disagreed with the amount of compensation I said I was minded to award Ms O because of the avoidable distress and inconvenience it had caused.

In light of Ms O’s reply, I asked Monzo to explain why it didn’t send us a copy of the hospital report when it first sent us its file, or when, in November 2022, I asked it to send me all the information it had received from Ms O. Monzo said the report was sent with its file and suggested that, due to the number of screenshots, its file may not have uploaded properly. (This doesn’t explain why it wasn’t included with the information it sent in November 2022 – or why, despite Monzo saying it had attached it to its email of 14 December 2022, the report still wasn’t included with the evidence supplied.)

Given the new information and evidence provided, I emailed both sides on 20 January 2023 to address some of the points Ms O had made.

- I explained that the comment that court proceedings would be more appropriate in my provisional decision was a quote I’d taken from B’s cover letter, which I referred to as a piece of evidence – not because I accepted, or agreed with, what it said. And

I said that while I appreciated that Ms O had explored the possibility of suing B and, regrettably, didn't think it was possible, it doesn't affect the outcome of the complaint.

- I confirmed that I thought the reason code chosen by Monzo when it initiated the chargeback was the most appropriate one.
- In her reply to my provisional decision, Ms O reiterated that neither B nor Monzo had provided any terms and conditions and asked: 'How is it possible that [B] acted in line with their terms and conditions when you have not even received or read them?' I explained that I'd made the same point in my provisional decision and said: 'To be clear, as Monzo didn't have a copy of the [applicable] terms and conditions, I can't see how it could accept B's defence on this basis – and its message [to Ms O that said B had acted 'in line with their T&Cs] caused needless confusion and upset as a result.'
- Ms O also said there is a difference between the procedure mentioned in the epicrisis report and the letter signed by the surgeon ('procedure 1'), and the procedure she wanted ('procedure 2'). She said this was 'clear evidence that the wrong procedure was performed' and that, 'regardless, [neither procedure] was attempted as [the surgeon] cut a piece of stomach out and left it in my body to become infected. This is not a bariatric procedure nor is it safe or usual of any type of procedure which is why I used the term "botched".' And as well as providing the short report from the hospital where she had the emergency surgery, Ms O provided me with the contact details of her surgeon in London and explained that she'd be willing to get clearer evidence from him if necessary. And she said: 'I now ask for a fair opportunity for this case to be brought forward to Mastercard so they can properly assess it'.

In response to these points, I said:

'Unfortunately, a business can only initiate a chargeback once. As Monzo accepted B's defence, Ms O's claim cannot now be referred to Mastercard for a final decision. That's why I must decide if Ms O has lost out because of the mistakes Monzo made.'

Similarly, while I appreciate the Ms O's surgeon in London may be willing and able to provide more information, I need to consider this complaint based on the evidence that was available at the time, which is what Mastercard would have seen.

... I've reconsidered my provisional findings in light of the hospital report and Ms O's comments about the difference between [procedure 1] and [procedure 2]. I know Ms O will be very disappointed but I still don't think I can safely say that Mastercard would have determined the dispute in Ms O's favour. I'll explain why.

First, while there may be a difference between [procedure 1] and [procedure 2], the evidence I've seen doesn't include a contract or any pre-surgery documents that show what type of surgery Ms O wanted and/or paid for – or if the surgeon had any discretion about the type of procedure he could perform. What's more, Ms O says the surgeon didn't perform either [procedure 1] or [procedure 2]. But this isn't clear from the hospital report. So if the chargeback had been escalated to Mastercard, I don't think it would have determined the dispute in Ms O's favour on this point.

Second, I've carefully considered the hospital report, which includes the following sentence: 'the remenant (sic) stomach is left inside (sic) ischaemic dilated and full of secrestions (sic) causing a pressure on the spleen, liver, stomach pouch pancrease (sic).' It also says: 'stomach fundus and remenat (sic) removed in 2 pieces'. Ms O says the surgeon [overseas] cut a piece of her stomach out and left it in her body to become infected. However, I understand the 'remnant' stomach is the portion of the stomach that remains after gastric surgery. Again, I want to be clear: I am not saying that the surgery wasn't 'botched' or defective. I'm simply saying that I don't think the

hospital report, on its own, would have allowed Mastercard to conclude that it was and therefore determine the dispute in Ms O's favour.

I want to stress that this reflects both the limitations of the chargeback scheme – which doesn't allow for further evidence to be provided past a certain point – and the complexity of Ms O's claim. This is essentially a medical negligence claim. It's standard practice in litigation of this sort for independent experts to be appointed by both sides to assist the court, and for a large amount of evidence to be collected, analysed and presented to the court. The chargeback scheme, which is relatively basic, doesn't allow for either.'

I invited both sides to provide any further comments by 3 February 2023.

I received additional comments from Ms O and Monzo, which I've summarised and addressed below.

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.

In reply to my email, Ms O says, 'the most important information is still being disregarded and that is that Monzo did not receive any terms and conditions, so how can they say that [B] acted within their rights?' And she says B 'acted against the law'. Finally, Ms O says:

'[B] nearly killed me...I submitted multiple pieces of evidence which proved so – Monzo either disregarded or lost this evidence which is why Mastercard rejected my claim. Monzo then claimed that they had [B's] terms and conditions to go by but both myself and the ombudsman have failed to receive these terms and conditions.'

In my provisional decision, I said Ms O has explained the life changing consequences of the surgery. It's heartrending and I'm truly sorry. I want to assure Ms O that I haven't disregarded the fact that B hasn't provided a copy of its terms and conditions. But the absence of a contract – or terms and conditions – isn't determinative in this case. Instead, I've carefully considered all the available evidence to decide whether I think it was sufficient for Mastercard to determine the dispute in Ms O's favour. And for the reasons I've given, I don't think it was. I'd like to reiterate that Mastercard didn't reject Ms O's claim. Monzo didn't escalate the dispute to Mastercard – it accepted B's defence. And while I understand Ms O's concerns about Monzo losing or disregarding the evidence she supplied, I explained what evidence I'd seen in my provisional decision precisely to give Ms O the opportunity to send me any other evidence, which she did. So I now think I've seen and considered the key evidence in this case.

Monzo's reply to my provisional decision and subsequent email

In response to my provisional findings that Monzo should not have told Ms O that it had escalated the dispute to Mastercard when it hadn't, Monzo said:

'[We've] reviewed our responses and we've confirmed to the customer that we have escalated this claim to Mastercard to check if we can refund the customer and Mastercard has a very clear set of rules that we need to follow. By following those rules, we know that Mastercard would rule against the customer here, satisfied that the merchant has done their job.

...

[We've] reviewed our final response letter and it says "Mastercard has received your

claim and ruled in favour of the merchant”. This is the first part of our communication which was incorrect. The relevant point of our final response is that the process was followed and the case was “lost” (i.e. accept in the merchant’s favour, by us).’

It said it didn’t think £300 was ‘appropriate’ – or ‘in line with [its] redress policy’ – for ‘one error made’ and offered £50 instead.

In response to the email I sent on 20 January 2023, Monzo said:

‘[We’d] like to confirm that our messages were meant to say that “Monzo has followed our processes in raising chargebacks under the Mastercard chargeback scheme” not our T&Cs. I would like to apologise to [Ms O] for any undue confusion here.’

And it referred me to a page on our website where we explain our approach to compensating consumers for distress and inconvenience, and said:

‘[We’ve] reviewed your redress levels on your website and usually for an instance where the wording or possible phrasing has gone wrong in a final response...we should be awarding up to £100...’

As it accepted that Ms O was very confused by its messages, it revised its offer to £100.

First, the information on our website is there to give firms a broad overview of some of the things we consider when awarding compensation. But it’s important for Monzo to understand that we look at each case on its own merits. And the same mistake can have a different impact on different people – which means we may award different amounts in similar cases. We make all this very clear on our website.

On our website, we also provide some examples of the range of awards we might make.

We say that, typically, an apology or a small monetary award of less than £100 will fairly compensate someone for a one-off incident, such as a small administrative error or a short delay – especially when the impact is minimal. Monzo thinks this is the sort of award I should make in this case. I disagree.

On our website, we say: ‘An award between £100 and up to £300 might be suitable when there have been repeated small errors, or a larger single mistake, requiring a reasonable amount of effort to sort out. These typically result in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment or loss of expectation.’

In this case, Monzo told Ms O that ‘Mastercard had assessed your claim, and ruled in favour of the merchant’. This wasn’t true. And it wasn’t a small administrative error or a poor choice of words – it was simply wrong. Likewise, when it told Ms O that B was ‘acting in line with their T&Cs so we haven’t been able to take this further for you’, it was simply wrong. And these mistakes, which weren’t corrected by Monzo, caused needless confusion and upset at what was clearly a very difficult time for Ms O. I think Monzo has underestimated and downplayed the significance and impact of the mistakes it made. And I’m satisfied that an award of £300 is fair in the circumstances.

My final decision

For the reasons I’ve given, I uphold this complaint and direct Monzo Bank Ltd to pay Ms O £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 26 April 2023.

Christopher Reeves
Ombudsman