

[your address]

[their address]

[date]

Request for preservation of evidence in respect of ATM transactions

Dear Sir/Madam,

ACCOUNT NUMBER: xxxxxxxxxx

As you are aware I am currently in dispute with you in respect of certain ATM transactions on my account which I confirm that I did not make or authorize. There transactions are:

[date] [Description from Bank Statement] [£Amount]

[date] [Description from Bank Statement] [£Amount]

[date] [Description from Bank Statement] [£Amount]

Etc. ...

Under the law when matters of this kind are in dispute the burden of proof is upon you to establish on a balance of probabilities that I have made the said transactions or authorized the same once I have told you that I have not made or authorized them. In this regard I would respectfully direct you to Section 24 of the Bills of Exchange Act 1882 and Professor Christopher Reed's "Electronic Finance Law" (Woodhead-Falconer - ISBN - 0859416941) at page 64.

My request

Accordingly, pursuant to the Civil Practice Rules and specifically the legal requirement that, upon notice being served upon a party in

respect of a dispute, there is a duty to preserve all relevant evidence both in support of and against the dispute, I require you to **preserve** all relevant evidence in respect of your ATM system and the said disputed ATM transactions pending the determination of our dispute. This shall be done in the following manner:

1. In respect of the said disputed ATM transactions I require you to preserve the complete "*chain of transactional custody*" from the moment the alleged transaction was communicated to you. This shall include all transactional logs and error reports including any and all communications between your computers, computers belonging to or operated by corresponding banks (or other financial institutions), the ATM terminals alleged to have been used in the said transactions, the magnetic stripe on the ATM card and the Chip on the ATM card. Without prejudice to the forgoing this data shall include all the ATM receipts and all the ARCQ (Authorization Request Cryptogram) information. It shall also include all metadata, error logs, system reports, engineers' reports, maintenance schedules, software and software updates in respect of the complete system so that it is possible to establish the precise state of each and every component involved in the disputed ATM transaction. If you have CCTV images or other independent evidence surrounding the disputed transactions (e.g. serial numbers of bank notes in the ATMs) this too shall be preserved. If you are aware of CCTV images or other independent evidence which may be retained by others in the vicinity of the disputed transactions then you should seek to have this preserved as well.
2. In respect of all ATM transactions I understand that you will have reports from internal audit and from security consultants on the security (or otherwise) of your ATM network and its vulnerability to fraud (both internal and external). While I am prepared to admit that these are confidential documents they are not privileged documents and I require you to undertake to **preserve** them and in due course, if this matter proceeds to

litigation (or adjudication by the FOS) to list each and everyone of them, together with the reports of actions taken to counter the vulnerabilities raised by the said reports.

[If the customer still has the card] I still have my ATM card which I am keeping in a safe place. I understand that the ATM card is meant to contain within it what is termed an Application Transaction Counter (ATC). This ATC is incremented by one each time a transaction is initiated. Should you so wish, and at your expense, I am prepared to give my ATM card to an independent forensic analyst to enable him to establish whether the ATC has been incremented in accordance with each and every ATM transaction upon my bank statements or whether there are any discrepancies. To enable this to be done you are to provide the independent forensic expert with full cooperation in respect of his enquiries.

[If the customer no longer has the card because he returned it to the bank] I returned my ATM card to you on [Date] and I trust that you have kept it securely. I understand, that every ATM card is meant to contain within it what is termed an Application Transaction Counter (ATC). This ATC is incremented by one each time a transaction is initiated. Should you so wish, and at your expense, I am prepared to give my ATM card to an independent forensic analyst to enable him to establish whether the ATC has been incremented in accordance with each and every ATM transaction upon my bank statements or whether there are any discrepancies. To enable this to be done you are to provide the independent forensic expert with full cooperation in respect of his enquiries.

Accordingly within 14 days of the date of this letter you may either:

1. Reimburse me with all the disputed ATM transactions listed at the start of this letter; or
2. Confirm that you have **preserved** all the above information pending the determination of this dispute. If you have been

unable to **preserve** any of the above information you must notify me of this fact in your reply.

Yours faithfully,