**SAMPLE LETTER 2: COMPLAINT TO COSL**

**IMPORTANT: Get advice from Consumer Action if you have difficulty presenting your complaint. COSL's Rules say that if you have any difficulty in presenting your complaint, it will also help you. Contact details are above.**

[Your name]

[Address]

[SUBURB STATE POSTCODE]

[Date]

Credit Ombudsman Service Limited

PO Box A252
SYDNEY SOUTH NSW 1235

**LETTER OF COMPLAINT**

Dear Sir or Madam

**[Your name] against [Name of company] ("Motor Finance Wizard")**

**Lease Contract No. [insert number]**

**BACKGROUND**

* On [date] I entered an arrangement with Motor Finance Wizard in relation to [insert details of the car: Make, Model, Registration] ("**the Contract**").
* I have since made repayments totaling [$XX,XXX.XX].
* I traded in a car [insert details of the car: Make, Model, Registration - if applicable]

**CONDUCT OF MOTOR FINANCE WIZARD**

I am unhappy with Motor Finance Wizard and I request that the Ombudsman investigate the following questions:

**Set out why you are unhappy with Motor Finance Wizard.** The following headings and examples are provided as a guide only. Delete anything that doesn't apply to you.

1. **Early termination fee: where you have returned the vehicle and Motor Finance Wizard are chasing you for an early termination fee**

\* Example:

After I returned the car and cancelled the contract, MFW has demanded I pay an early termination fee amounting to [$X].

I believe the early termination fee is not a genuine estimate of its likely loss and is an arbitrary amount. It amounts to a penalty and is an unfair contract term. I refer the Ombudsman to the decision in *Walker v DTGV1* in which it was held that the early termination fee charged by MFW was a penalty and unenforceable and the consumer received a full refund.

1. **The contract didn't meet my requirements and objectives (purposes)**

\* Examples:

* 1. I wanted to own the car at the end of the contract and the contract gives me no right to do so;
	2. I was to pay substantially more under the contract than I would have paid had I had bought the car outright or obtained a car loan. These payments included [$ ] fortnightly rental payments, insurance, registration and maintenance of the vehicle.
	3. Anything else you required which was not provided under the Contract.
1. **Financial difficulty**

\* Example:

At the time I entered into the agreement, I was unable to afford payments under it because:

[give details of your financial position when you entered into the contract]

1. **Misleading or deceptive conduct**

\* Example:

I was led to believe that I was entering into a loan, not a lease, because [provide details - e.g. did you see an advertisement that led you to believe this? Did the sales representative say something that led you to believe this? [if so, give details - remember, it is critical that you ensure this information is true and correct]

1. **Unjust, unfair or unconscionable conduct**

\* Example:

1. I was in a weaker bargaining position because [e.g. lack of education, income, lack of knowledge of cars, finance etc.]
2. I was not able to understand the documents because [e.g. I wasn't given them, I didn't have time to read them and they are very complex]
3. I was subjected to undue influence or pressure, or unfair tactics because [ e.g. I was kept waiting for a long time and then rushed through making decisions]
4. I could have acquired an equivalent car from another supplier for much less than I had to pay to Motor Finance Wizard [if so, give details]
5. The contract was not subject to negotiation
6. The contract was not in a form that was easy for me to understand
7. I didn't get legal or any other independent advice about the transaction
8. The provisions of the contract were not accurately explained to me. [Explain why you think this.]
9. **Defective vehicle**

\*Example

The car has many problems, including [set out the problems with the car and provide a mechanic's report if you have one]:

I was unable to drive the car for [time];

I have had to pay [$X] on repairing the car [provide copies of receipts if you have them].

1. **Conduct surrounding repossession**

\* Example:

I was not provided with any notice before Motor Finance Wizard repossessed the vehicle;

The repossession agent engaged in unfair conduct including [set out the conduct you want to complain about].

**Other legal arguments**

I also ask the Ombudsman to investigate any other matters relevant to my dispute, including whether:

* the contract contained unfair terms which caused me loss or was not capable of operating without the unfair term;
* Motor Finance Wizard complied with the disclosure requirements of the National Credit Code, if the contract is a credit contract and not a lease.

**OUTCOME SOUGHT**

\*Example 1:

I am seeking:

* a finding that no debt is owing;
* repayments made under the contract amounting to $[insert amount] be refunded to me;
* interest;
* any other expenses or loss suffered caused by entering in into the contract, such as payments made to repair the vehicle;
* the value or return of any trade-in vehicle.

\*Example 2:

Assessing what I am lawfully entitled to is difficult without legal advice. As I have been unable to obtain legal representation, I will be requesting that the ombudsman investigate this dispute and provide me with an indication of a fair resolution.

To help me in understanding what outcome is fair, please provide me with copies of all relevant documents.

Yours faithfully

**[Name]**

Encl.

cc: [Australian Securities and Investment Commission]

 [Local Member]