The Role of an Insurance Intermediary in Fiji: A Critical Perspective of the Consumer

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SUMMARY

The purpose of this article is to critically examine the role played by insurance brokers in the non-life or general insurance sector in Fiji with reference to consumer protection. The article evaluates the regulatory framework enshrined under the Insurance Act 1998 (Fiji) (1998 Act) related to intermediaries in the insurance sector. The article aims to analyse and compare the position of the Act in Fiji with that in the United Kingdom and Australia. The comparative analysis reveals shortfalls in the Fijian legislation and paves the way for legislative reforms in the 1998 Act.

KEYWORDS:

Insurance, insurance broker, consumer protection, Fiji, UK, Australia

1 INTRODUCTION

While the insurance business is placed directly with insurance companies by the proposer, much of it is arranged through intermediaries. The two types of insurance intermediaries are agents and brokers.[1] Agents represent their principals (insurance companies)[2] and brokers represent their clients (policyholders).[3] Agents are authorized by their principals to canvass for new business on behalf of the principal and collect premiums. Unlike agents, brokers are insurance specialists who are not attached to any particular insurance company and place their clients' business with the insurer, which he believes can provide the best contract for the particular risk. Insurance intermediaries serve as a critical link between insurance companies selling policies and consumers seeking securities.[4]

The insurance industry in Fiji is regulated by the Reserve Bank of Fiji (RBF) under the 1998 Act.[5] The RBF is assigned specific functions[6] in formulating insurance standards governing the conduct of the insurance business in Fiji.[7] The role of the RBF in the administration of the insurance sector is to promote confidence in the insurance industry[8] and protect policyholders through the various powers and provisions of the 1998 Act.[9]

As part of its regulatory framework, the RBF issues Insurance Supervision Policy Statements (ISPSs),[10] such as the Minimum Requirements for Corporate Governance of Licensed Entities.[11] In formulating supervisory policies, the RBF tends to refer to international best practices.[12] This embraces the international standards issued by the International Association of Insurance Supervisors (IAIS), the Financial Action Taskforce (FATF), and the Organization for Economic Cooperation and Development (OECD).[13] To ensure that the policy ensembles the true needs of the insurance consumers,[14] and the aspirations of the local business environment, key stakeholders are consulted during the development phase to foster an effective understanding of the policy objectives.[15] In 2019, the RBF launched a New Strategic Plan (Rising above the Bar of Expectations) August 2019–July 2024.[16] The objective of the New Strategic Plan is to continue to strengthen its regulatory and supervisory framework, by enhancing its work on institution-specific monitoring and ongoing macro-prudential surveillance.[17] Under the New Strategic Plan, the RBF will continue to work on the review of the 1998 Act, to ensure its relevance to the industry and align with new supervisory approaches and regulatory developments.[18]

The insurance industry in the UK is dual regulated. It is authorized and regulated from a prudential perspective by the Prudential Regulation Authority (PRA) and from a conduct perspective by the Financial Conduct Authority (FCA). The industry operates under the statutory framework established by the Financial Services and Markets Act 2000 (FSMA 2000 (UK)) and, more recently, the Financial Services Act 2012 (FSA 2012 (UK)).[19] As part of the Bank of England, the PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers, and major investment firms in the UK.[20] As such, the PRA promotes the safety and soundness of insurers and protects policyholders.

The FCA, on the other hand, is an independent financial regulatory body (under the HM Treasury ministerial department) responsible for protecting consumers, helping to keep the industry stable, and promoting fair and healthy competition between financial service providers.[21] The FCA generates its revenue by charging fees to members of the financial services industry.[22]

The Insurance Act 2015 (UK) (IA 2015 (UK)) did not repeal the Marine Insurance Act 1906 (MIA 1906 (UK)), but changed

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[1] *Insurance Intermediary* (Community Legal Information Centre, The University of Hong Kong 12 Feb. 2020), https://www.clic.org.hk/en/topics/insurance/how_can_I_get_an_insurance_policy/insurance_intermediaries/q1 (accessed 1 Dec. 2021).

[2] *Insurance Act 1998* (Fiji), s. 2(1) *('1998 Act')*.

[3] *Ibid*.

[4] *The Role of Insurance Intermediaries*, WFii, https://www.ciab.com/wp-content/uploads/2017/04/RoleOfInsInt.pdf (accessed 1 Dec. 2021).

[5] *1998 Act, supra* n. 2, s. 3.

[6] *Ibid*., s. 3(1).

[7] The Reserve Bank of Fiji, Insurance Annual Report 2019, at 15.

[8] *1998 Act, supra* n. 2, s. 3(2).

[9] Insurance Report 2019, *supra* n. 7, at 14.

[10] *Ibid*.

[11] *Ibid*.

[12] *The Role of Insurance Intermediaries, supra* n. 4, at 3.

[13] Insurance Report 2019, *supra* n. 7, at 15.

[14] The Organization for Economic Co-operation and Development (OECD), *Regulatory and Supervisory Framework for Insurance Intermediation*, www.oecd.org/finance/insurance/Regulatory-and-Supervisory-Framework-for-InsuranceIntermediation.pdf (accessed 1 Dec. 2021).

[15] Insurance Report 2019, *supra* n. 7, at 14.

[16] *Ibid*.

[17] *Ibid*., at 2.

[18] *Ibid*.

[19] Prudential Regulation, *We Are the Prudential Regulation Authority*, Bank of England, https://www.bankofengland.co.uk/prudential-regulation (accessed 16 Nov. 2021).

[20] *Ibid*.

[21] Financial Conduct Authority, Annual Report and Accounts 2019/20, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916806/FCA_Annual_Report_2019_20.pdf (accessed 16 Nov. 2021).

[22] *Ibid*., at 55.

the law concerning non-consumer policyholders,[23] by repealing the sections on disclosure and representation of the MIA 1906 (UK).[24] The relevance of the MIA 1906 (UK) to non-life insurance is that the duty of disclosure under the MIA 1906 (UK) is also applied to non-life insurance contracts.[25] Under sections 18 and 20 of the MIA 1906 (UK), the insured was obliged to disclose all material circumstances that it knew, or ought to have known, in the ordinary course of its business.[26] The IA 2015 (UK) imposed a new duty 'the duty of fair presentation'[27] and replaced the duty of utmost good faith. Under the duty of fair presentation, a proposer should either disclose 'every material fact', which the proposer knows or expects to know, or give the insurer 'sufficient facts'[28] to enable the insurer to make further inquiries.[29]

Compared with the Fijian and UK authorities, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential and Regulatory Authority (APRA) regulate the insurance sector and the Australian insurance industry.[30] The three main pieces of legislation include the Insurance Act 1973 (Cth) (IA 1973 (Cth)), which sets the minimum capital and solvency requirements for insurance companies and the Corporations Act 2001 (Cth) (CA 2001 (Cth)), which regulates Australian companies, financial services, and markets. Chapter 7 of the IA 1973 (Cth) regulates how insurers and insurance agents and brokers carry on business, licensing, disclosure and conduct requirements), and the Insurance Contracts Act 1984 (Cth) (ICA 1984 (Cth), which ensures that a fair balance is struck between the insurer and the insured.[31]

The ASIC is responsible for the administration of the ICA 1984 (Cth).[32] The ASIC also regulates consumer protection in the financial services industry.[33] The ASIC administers the licensing, disclosure, and conduct of financial services, licensees, insurers, and insurance intermediaries.[34] While the PRA promotes the safety and soundness of insurers and protects policyholders, the FCA regulates the UK's financial markets. The APRA is responsible for the administration of the IA 1973 (Cth).[35] The APRA has the power to authorize both insurers and reinsurers to carry on the general insurance business in Australia.

Consumer protection is essential for the industry, not only as a goal in itself but also because it is the most essential factor for providing social security.[36] In the process, the Fiji Insurance Act 1998, the Consumer Insurance (Disclosure and Representations) Act 2012 (UK) (CI (DR) Act 2012 (UK)), has been examined and the IA 1973 (Cth) has been examined. The reason for choosing the UK and Australia is that – the UK being the world's most open and connected financial centre places the UK as a world-leading expert in the field of insurance[37]; while the Australian experience will provide invaluable guidance for Fiji, as Fiji's experience by far remains modest in comparison with Australia. Thus, a comparative analysis of the relevant pieces of legislation in these jurisdictions will reveal the shortfalls in the Fijian legislation and accordingly pave the path for legislative reform. While the case laws in the UK and Australia are not binding on the courts in Fiji, they may be highly persuasive. Thus, consumer protection and community concerns derive reform.

2 The Insurance Act 1998 (Fiji): The regulatory framework for intermediaries

The insurance industry is regulated by the RBF under the 1998 Act.[38] Before this legislation, the Insurance Act, 1976, regulated the insurance industry in Fiji. The Insurance Act, 1976, that came into force on 1 January 1977, repealed and replaced the Assurance Companies Ordinance (Cap 188), the Life Assurance Ordinance (Cap 189), and the Insurance Agents and Broker Act No. 33 of 1972. The Insurance Act, 1976 established the Office of the Commissioner of Insurance[39] responsible for the formulation of standards in the conduct of the insurance business in Fiji.[40] Given the imbalances in the Insurance Act, 1976 (Cap 217) (1976 Act)[41] between the interests of insurers, insureds, and other participants, the Insurance Law Reform Act, 1996 (ILR Act 1996) was enacted.[42] This new legislation constituted a general code of practice to strike a balance between the interests of all insurance parties.[43] As time passed, many of the provisions of the 1976 Act became obsolete and outdated as they have not kept pace with the developments in the financial institutions/system.[44] Thus, the RBF, being the regulator of the insurance industry, undertook the task of reviewing the

[23] Solicitors Regulation Authority, *The Case for Insurance Contract Law Reform* 1 (Clyde & Co. LLP Jun. 2016).
[24] Hershel, *Reform to UK Insurance Law: An Overview of Key Changes* 5–6, n. 12.
[25] *Ibid*.
[26] *Marine Insurance Act 1906* (UK), s. 13 *('MIA 1906* (UK)').
[27] *Insurance Act 2015* (UK), s. 3 ('*IA 2015* (UK)').
[28] *CTI v. Oceanus* [1984] 1 Lloyd's LR 476; *Garnat Trading and Shipping v. Baominh Insurance Corporation* [2011] EWCA Civ 773.
[29] *IA 2015* (UK), *supra* n. 27, s. 5(3).
[30] About APRA, http://www.apra.gov.au/pages/default.aspx (accessed 10 Apr. 2020).
[31] *Insurance Contracts Act 1984* (Cth), s. 13 *('ICA 1984* (Cth)').
[32] *Ibid*., s. 11A.
[33] *Ibid*.
[34] Australian Securities & Investments Commission, http://www.asic.gov.au/ (accessed 10 Apr. 2020).
[35] Australia: Insurance & Reinsurance Laws and Regulations 2021, ICLG, https://iclg.com/practice-areas/insurance-and-reinsurance-laws-and-regulations/australia (accessed 10 Apr. 2020).
[36] Isabelle Daugareith, *Social Protection and the Platform Economy: The Anomalous Approach of the French Legislator*, 74(3–4) (Special issue), University of Bordeaux, France (2021), https://onlinelibrary.wiley.com/doi/epdf/10.1111/issr.12279 (accessed 1 Dec. 2021).
[37] The Global City, *The UK: 'The Heart of the World's Financial Market'*, https://www.theglobalcity.uk/global-financial-centre (accessed 16 Nov. 2021).
[38] *1998 Act, supra* n. 2, s. 3.
[39] *Ibid*.
[40] *Ibid*., s. 5.
[41] Fiji Parliamentary Debates, Meetings of 17 Jul. 1996, Insurance Law Reform Bill, 1996, 3061. (The Author obtained a copy from Pacific Collections, The University of the South Pacific, Suva, Fiji, on 21 Aug. 2019).
[42] Insurance Law Reform Act, 1996 came into force on 1 Jan. 1997.
[43] Insurance Law Reform Bill, *supra* n. 41, at 3061.
[44] Parliament of Fiji, Fiji Parliamentary Debates (Hansard), House of Representatives, Meetings of Jul.–Aug. 1998, Suva, Fiji, 13 Aug., 523. (The Author obtained a copy from Pacific Collections, The University of the South Pacific, Suva, Fiji, pac J961. K2 on 21 Aug. 2019).

1976 Act.[45] Consequently, the 1998 Act[46] came into force on 1 January 1999, which repealed the 1976 Act.[47] The consumer protection provisions of the 1998 Act are analysed as follow

2.1 Licensing of Intermediaries

On the issue of licensing of intermediaries, section 43(1)(a) of the 1998 Act inter alia *states* that: '*the applicant has sufficient experience in and knowledge of insurance matters*'; which is vague. This is vague in two ways. One, in the sense that it does not state the number of years of experience that is required to qualify as sufficient experience. What might be perceived as sufficient experience for one person, might not be sufficient for another person or the regulator, and vice versa. In the absence of any fixed number of years of experience required to qualify as sufficient experience, this is open to litigation. Secondly, in the absence of any means to measure knowledge on insurance matters, such as a formal qualification in insurance, etc., how does the RBF measure knowledge on insurance matters? Thus, an inexperienced person, or an unqualified person, who is appointed intermediary will pose a considerable risk for consumers, as well as insurance companies.

Thus, the RBF, being the regulator of the industry, should set a mandatory examination to determine whether the applicant has sufficient knowledge of insurance matters and specifics of the policies. For example, if a person has worked all his life in finance he would not know how to underwrite a risk or how a claim is processed. Therefore, to ensure greater consumer protection, the regulator must appoint a fit and proper person as an intermediary. However, there is no such provision in the IA 2015 (UK) or in the ICA 1984 (Cth).

2.2 Management of Licensed Insurers and Brokers

Management of licensed insurers and brokers is fundamental because the interests of the public are at stake. Thus, section 12 of the 1998 Act states that: '*every licensed insurer or broker must endeavor to place qualified Fiji citizens in management positions in its operations, and present to the RBF a program of training*'. The first and foremost drawback of this provision is that it states that: '*every licensed insurer or broker must endeavor*'. The word 'endeavor' is too soft for a provision such as section 12 that deals with management positions. The management is the 'heart' of any organization and if they are not qualified enough to effectively run the show, the business will financially suffer. Consequently, the objective of the firm as a 'going concern' will taste death sooner than later.

Thus, the RBF should ensure that insurance companies and brokers conduct regular training (in-house). The question that arises is whether the RBF is monitoring such training or is just there on article. It appears that it is just there on article as a requirement but not monitored because there is no mention of any training in the Insurance Annual Report. At least two senior staff of the RBF should be part of all in-house training, not only to witness the training but also to give critical feedback for any improvements.

On the other hand, to ensure that the insurance industry has qualified employees and intermediaries, the RBF should liaise with tertiary education institutes in Fiji to develop certificate, diploma, and degree courses on insurance. This will not only ensure that we have qualified individuals in management positions in the industry, but will create insurance awareness in society, which in turn will promote insurance intake or penetration. While there is no such provision in the UK or Australian legislation, insurance institutes, such as the Chartered Insurance Institute in the UK, and the Australia and New Zealand Insurance Institute in Australia, conduct their own courses in addition to what is being offered by the universities there.

2.3 Holding Out as Licensed Insurer or Intermediaries

While section 15(1) of the 1998 Act is designed to protect consumers, section 15(3) contradicts section 4(5) of the 1998 Act. Section 4(5) of the 1998 Act states that:

> *[I]f a person is the agent of more than one insurer and the person engages in any conduct relating to a class of insurance business in which the person is not the agent of any of those insurers, the insurers are jointly and severally liable for that conduct, as between themselves and the insured, even though the agent acted outside the scope of the authority granted by any of the insurers.*[48]

Section 15(3) of the 1998 Act states that it is a defence for a person to prove that the holding out was made without his or their consent or knowledge. In one way, this provision could promote 'holding out' because it very clearly states the defence. In other words, if a person knowingly let another person hold out as an agent but does nothing to stop him/her from holding out as an agent, that person could contend that the 'holding out' was without his or their consent or knowledge. Therefore, this provision is not only misleading but also prone to abuse.

On the other hand, section 15(1) of the IA 2015 (UK) and section 10(1) of the CI (DR) Act 2012 (UK), state that if a consumer insurance contract or any other contract, which would put the consumer in a worse position than the consumer would be in by these provisions, it is to that extent of no effect.[49] This is consumer protection.

If the RBF believes that any person is carrying an insurance business without having been licensed under the 1998 Act, the RBF may investigate that person.[50] This provision is misleading because the RBF can only investigate facts relating to a person, not investigate the person himself. While section 16(1) of the 1998 Act is in the interest of the consumer (i.e., protecting consumers from an unlicensed person), the use of

[45] The Central Monetary Authority of Fiji (CMA), which was established in Jul. 1973 to nurture development, was replaced in 1984 by the Reserve Bank of Fiji (RBF). Section 153 (1)–(6) of the 2013 Constitution of Fiji states the primary objects of the RBF. The principal purposes of the RBF are outlined in s. 4 of the RBF Act (1983) and the RBF (Amendment) Decree 2009. The RBF also administers the Banking Act (1995), Exchange Control Act (Rev 1985), and the Insurance Act (1998), https://www.centralbanking.com/central-banks/2480701/reserve-bank-of-fiji (accessed 21 Feb. 2021).

[46] The Insurance Act No. 36 of 1998 was enacted on 14 Aug. 1998 and came into force on 1 Jan. 1999.

[47] *1998 Act, supra* n. 2, s. 171.

[48] *Ibid.*, s. 4(5).

[49] *See IA 2015* (UK), *supra* n. 27, s. 15(1); and Consumer Insurance (Disclosure and Representations) Act 2012 (UK), s. 10(1) *('CI (DR) Act 2012* (UK)').

[50] *1998 Act, supra* n. 2, s. 16(1).

the term 'may' give the RBF the discretion whether or not to examine, inspect, or investigate the person whom the RBF believes is carrying on an insurance business as an insurer, agent, or broker without having been licensed under the 1998 Act. While there is no similar provision in the IA 2015 (UK), and CI (DR) Act 2012 (UK), there is a similar provision in the IA 1973 (Cth).[51]

The RBF, under section 101(1) of the 1998 Act, may cancel an intermediary's licence. Section 101(1) of the 1998 Act states that: '*[T]he Reserve Bank may at any time cancel a licence issued to an intermediary if the Reserve Bank considers there are reasonable grounds for doing so*',[52] but there is no requirement that it must be published in the Gazette and daily newspaper circulating in Fiji which is the case for insurers.[53] Section 100(6) of the same 1998 Act states that if an insurer's licence is cancelled, it '*must be published in the Gazette and a daily newspaper circulating in Fiji*'.[54] This requirement is not there for intermediaries in section 101 of the 1998 Act. Thus, section 101(1) of the 1998 Act is not only biased towards intermediaries, but is damaging to insurance consumers because if an intermediary's licence is cancelled and the public is unaware of this fact, people could continue to use the services of the intermediary, and eventually suffer. There is no such provision in either the UK or Australian legislation.

In this consumerist world, intermediaries place most commercial and many retail insurance contracts.[55] Thus, insurance intermediaries, such as insurance agents and brokers, perform vitally important functions in the insurance business, both in the context of placing insurance cover and the settlement of claims. Thus, section 6(1)(a) of the 1998 Act[56] states that an intermediary must provide a reasonable explanation to a person proposing to enter into or renew a contract of insurance of all documents required to be signed by that person. While section 6(1)(b) of the 1998 Act[57] requires the intermediary to communicate all information to the insurer likely to affect the contract further, section 6(1)(c) of the 1998 Act[58] imposes a duty on the intermediary to provide a reasonable explanation to the client of the extent of cover and exclusions contained in the policy. This provision is very vague. It is vague because the word 'reasonable' is not defined in the 1998 Act. What might be reasonable for the intermediary might not be reasonable for the insured. In the absence of any definition of the term 'reasonable' in the Fijian legislation, this can lead to the widest range of interpretations of the term and make it difficult for the regulator to prove contravention. The insurance legislation in the UK and Australia are also silent on this.

In Elilade Pty Ltd v. Nonparell Pty Ltd & CIC Insurance Limited[59] the court held that insurance brokers must highlight important exclusions in the policy of insurance so that clients can make fully informed decisions on whether or not to seek coverage for the excluded perils. On the other hand, the IA 2015 (UK) ensures that the insured has to make a fair presentation of the risk at the time the contract is entered into[60] and this is being considered as a 'duty' for the proposer in the IA 2015 (UK).[61] The IA 2015 (UK),[62] includes required disclosures[63] that are reasonably clear and accessible to a prudent insurer, and 'in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith'.[64] Furthermore, section 4 of the IA 2015 Act (UK) deals with the actual knowledge of the insured and considers what the insured knows or ought to know.[65]

This includes the knowledge of an actual individual,[66] or the insured's senior management, or those responsible for insurance.[67] The knowledge[68] and general knowledge[69] of the insurer are necessary to consider whether the insured has made a fair presentation of the risk.[70] In addition to actual knowledge, this includes 'matters which the individual suspected' and Nelsonian blindness for deliberately refraining from, or confirming, certain knowledge.[71]

The CI (DR) Act 2012 (UK) abolished the volunteering of information by the insured. Section 2(2) states that '[I]t is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer'.[72] If the insurer wishes to know something, he must ask a question. The proposer is under a duty to answer questions with reasonable care.[73] This is a test against the answers of a reasonable consumer,[74] abolishing the prudent insurer test. If the insured's answer is careless, then the insurer can no longer avoid the contract *ab initio* unless he would never have entered the contract in the first place.[75] Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all relevant circumstances.[76] Similarly, the ICA 1984 (Cth)[77] states that an insured must disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that the insured knows, or a reasonable person in the circumstances could be expected to know, to be a matter so relevant.[78]

[51] *Insurance Act 1973* (Cth), s. 62A ('*IA 1973* (Cth)').
[52] *1998 Act, supra* n. 2, s. 101(1).
[53] *Ibid*., s. 100(6).
[54] *Ibid*.
[55] An intermediary is a general term that refers to insurance agents and brokers. In *Western Australian Insurance Co Ltd v. Dayton* [1924] HCA 58, the court described insurance agents as 'gatherers' of insurance business on behalf of their principal. Agents represent a particular company, where brokers act on behalf of their clients. *See Norwich Fire Insurance Society Ltd v. Brennans (Horsham) Pty Ltd* [1981] VR 981. Julie-Anne Tarr, *The Regulation of Insurance Intermediaries in the Australian Financial Services Market*, 38(6) Austl. Bus. L. Rev. 332–350 (2010), https://eprints.qut.edu.au/39947/1/39947.pdf (accessed 3 Jun. 2021).
[56] *1998 Act, supra* n. 2, s. 6(1)(a).
[57] *Ibid*., s. 6(1)(b).
[58] *Ibid*., s. 6(1)(c).
[59] [2002] FCA 909, para. 1.
[60] *IA 2015* (UK), *supra* n. 27, s. 3(1).
[61] *Ibid*., s. 3(2).
[62] *Ibid*., s. 3(3) (a)–(c).
[63] *Ibid*., s. 3(4).
[64] *Ibid*.
[65] *Ibid*., s. 4(3).
[66] *Ibid*., s. 4(2).
[67] *Ibid*., s. 4(3).
[68] *Ibid*., s. 5.
[69] *Ibid*., s. 6.
[70] *Ibid*., s. 3(1).
[71] *Ibid*., s. 6(1).
[72] *CI (DR) Act 2012* (UK), *supra* n. 49, s. 2(2).
[73] *Ibid*., s. 2(2).
[74] *Ibid*., s. 2(3).
[75] *Ibid*., Sch. 1, s. 5.
[76] *Ibid*., s. 3(1).
[77] *ICA 1984* (Cth), *supra* n. 31, s. 21(1).
[78] *Ibid*., s. 21(1).

Furthermore, section 22(1) of the ICA 1984 (Cth) requires the insurer, before accepting the cover, to inform the insured in writing of the significance and effects of the duty of disclosure.[79] On the other hand, an intermediary becomes the agent of the insurer when an agent has the express authority to issue cover notes.

In *Chop Eng Thye Co v. Malaysian National Insurance Sdn Bhd,*[80] the agent had the authority to issue cover notes on behalf of the insurer. The cover note stipulated that it would be in force for thirty days and that it was subject to the terms, exceptions, and conditions contained in the policy. The court held that the cover note issued by the agent, because the agent was authorized to issue such cover notes, bound the insurer.[81] This case establishes that the cover notes issued by the agent bind where an agent has the express authority to issue cover notes, the insurer.

On the other hand, the court in *Rozanes v. Bowen*[82] *(Rozanes*) held a contrary opinion. In this case, the insured informed the agent of his previous two claims and obtained a cover.[83] The agent only disclosed one claim to the insurer.[84] There was another loss, but the insurer could decline to pay based on the non-disclosure of the second loss.[85] Since the agent was informed of the losses, it is implied that the insurer knew about the losses.[86] However, the court held that the policy was void for non-disclosure.[87] In this case, the agent is held out as having apparent authority to act.

Furthermore, in *British Bank of the Middle East v. Sun Life Assurance Co of Canada (UK) Ltd,*[88] the court held that such apparent authority must be held out as a person having actual authority in the matter to act. The insured must show that he/she relies upon the agent's authority. There can be no reliance on the insured if he has noticed that the agent lacks the authority to bind the insurer.[89]

Further still, in *Newsholme Bros v. Road Transport & General Insurance Co Ltd*[90] the English Court of Appeal held where the proponent requested an insurer's agent to fill the proposal on his behalf, the insurer's agent will be acting as agent for the insured.[91] As far as the 1998 Act is concerned, the intermediary must provide a reasonable explanation to the proposer of the contents of the proposal, and the extent of cover and exclusions contained in the policy.[92] The purpose of section 6(1)(a) is to ensure that the proposer fully understands the significance of the duty of disclosure and not to make a misrepresentation.[93]

On the other hand, according to Australian legislation, an insurer is not required to explain any provision that is not part of the contract of insurance.[94] Section 17(2) of the IA 2015 (UK) states that the insurer must inform the insured of any unfavourable clause or terms (as mentioned under section 16(2)) before entering into a contract of insurance.[95] For instance, an excess or deductible is an unfavourable term because the insured will not be able to claim any loss up to the amount of excess or deductible. The disadvantageous term must be free of ambiguity.[96] Unless the insured knows of the detrimental term before entering into the contract, it is the duty of the insurer to inform the insured of any such detrimental terms.[97]

In *Eurokey Recycling Ltd v. Giles Insurance Brokers Ltd's perspective* (the Eurokey)[98] the court reversed the trend of brokers' duties becoming more onerous with each reported case.[99] In Eurokey's case, Giles were the broker placing insurance cover for waste recycling plants.[100] The cover included business interruption based on a turnover of GBP 11m,[101] however, the actual turnover of Eurokey was GBP 17.6m.[102]

When a fire occurred, the insured received a very low amount from the insurer. The insured tried to recover the shortfall in negligence from the broker.[103] The court held that a broker is not expected to know or investigate a client's business. While the court was of a similar view in *Jones v. Environcom Ltd & Anor,*[104] the court states that the broker must still take reasonable steps to ascertain the nature of the client's business and their insurance needs.[105] While the broker owes a deep-rooted duty towards its client, the client cannot expect the broker to know the client's business for insurance purposes. While it is not the duty of the broker to carry out a detailed examination of a client's business[106] the broker must keep written records of the conversation or advice provided to the client.[107]

Under the IA 2015 (UK), the disclosure must be free of ambiguity, in an accessible manner, material representation must be 'substantially correct' and material representations of expectations or beliefs must be made in 'good faith'.[108]

[79] *Ibid*., s. 21A.
[80] (1977) 1 MLJ 161. (*See British Bank of the Middle East v. Sun Life Assurance Co of Canada (UK) Ltd* (1983) 2 Lloyd's Law Report 9; and *Claude R Ogden & Co Pty Ltd v. Reliance Fire Sprinkler Co Pty Ltd & Ors* (1973) 2 NSWLR 7 (1991) 6 ANZ CAS 61 – 066 (CA NSW)).
[81] *Wilkinson v. Gaflac* (1967) 2 Lloyd's Law Report 182. There can be no reliance by the insured if he or she is aware that the agent lacks the authority to bind the insurer. (*See Bank of New Zealand v. Sedgwick James Ltd* (1995) 8 ANZ Ins Cas 61 – 280 (HCNZ) at 76,097).
[82] (1928) 31 Lloyd's Law Report 321, para. 12.
[83] *Ibid*.
[84] *Ibid*.
[85] *Ibid*., para. 14.
[86] *Ibid*.
[87] *Ibid*.
[88] [1983] 2 Lloyd's Rep 9.
[89] *Wilkinson v. Gaflac*, *supra* n. 81.
[90] *Newsholme Bros v. Road Transport & General Insurance Co Ltd* [1929] 2 KB 356. *See O'Connor v. BDB Kirby & Co* [1972] 1 QB 90; [1971] 2 WLR 1233; [1971] 2 All ER 1415 (CA); and *also see Jumna Khan v. . Bankers & Traders Insurance Co Ltd* (1925) 37 CLR 451; 27 SR (NSW) 13; 43 WN (NSW) 98.
[91] *Ibid*.
[92] *Ibid*.
[93] *Ibid*.
[94] *ICA 1984* (Cth), *supra* n. 31, s. 37.
[95] *IA 2015* (UK), *supra* n. 27, s. 17(2).
[96] *Ibid*., s. 17(3).
[97] *Ibid*., s. 17(4) and (5).
[98] [2014] EWHC 2989 (Comm).
[99] Victoria Kempthorne, *Brokers' Duty in the Context of the Insurance Act 2015* 2 (Clarks Legal 29 Sep. 2016), https://www.clarkslegal.com/Blog/Post/Brokers_duties_in_the_context_of_the_Insurance_Act_2015_Jones_v_Environcom_and_Eurokey_v_Giles (accessed 30 Jun. 2021).
[100] *Ibid*.
[101] *Ibid*.
[102] *Ibid*.
[103] *Ibid*.
[104] [2010] EWHC 759.
[105] Kempthorne, *supra* n. 99, at 2.
[106] *Ibid*.
[107] *Ibid*.
[108] Kempthorne, *supra* n. 99, at 2.

Similarly, Fiji's High Court in *Dominion Autoparts and Accessories Ltd v. New India Assurance Co. Ltd.*,[109] held that a policy of insurance is a contract of '*utmost good faith*' which, inter alia, obligates a person applying for insurance.[110] In *Blueshield Pacific Insurance Limited v. Maureen Chandra Wati,*[111] the Fiji Court of Appeal held that '[T]he duty of disclosure … arises out of the fact that a contract of insurance is a contract *uberrimae fidei*'. The Court in *Carter v. Boehm*,[112] and *Seaton v. Heath*[113] suggests that the proposer needs to disclose all material facts material to the risk to be insured and not to conceal them.[114] Lord Mansfield further emphasized in *Holman v. Johnson* that 'no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act'.

If the proposer is aware of the consequences of non-disclosure, he will not take any risk to withhold or misrepresent the state of affairs of the subject matter. However, insurers are not statutorily bound to explain proposals and policies to prospective policyholders. Only intermediaries, i.e., agents, and brokers are required to explain proposals and policies to prospective policyholders. The question that arises is why are the insurers exempted from such an important duty? The consumers are the backbone of the industry and should receive the same level of services that are offered to intermediaries by the insurer. The imbalance between the duties of insurers and intermediaries are apparent. Therefore, section 1 (1)(a) of the 1998 Act of Fiji the '*Duty of an intermediary to explain proposals and policies*' is pro-insurers and neglects the interests of consumers when insurers should equally be held responsible as intermediaries to explain proposals and policies to prospective consumers.

While the proposal is the basis of the contract between the insurer and the insured, the policy is the evidence of that contract or promise. For example, when the Insurance Bill 1998 (Fiji) was being debated in the House of Representatives, Hon. C. J. Singh, a Member of the Opposition, cited two incidents. Two buildings were destroyed in a fire in Vanua Levu[115] on 1 January 1998. According to the insured, he was covered for a replacement value. The insurer informed them that they were insured on an indemnity basis/value.[116] In this incident, the insurer failed to explain the policy to the insured. In another incident, Hon. C. J. Singh mentioned that a policyholder's car was insured for USD 15,000 and after an accident; the insurer paid USD 10,000 in full settlement. The Honourable Member asked, 'why then was the insurance company accepting a premium at USD 15,000?'[117] This is a grossly fraudulent act. This happened because there are no proper checks and balances in the industry through legislation. More so, because the industry is self-regulated and the regulator is more concerned about prudential regulation, so that the interest of the policyholders is neglected.

2.4 Intermediaries to Give Certain Information

The 1998 Act requires intermediaries who arrange or effect a contract of the insurance, if so requested by the insured, to give particulars in writing of any fees or other amounts charged by the intermediary in respect of his services in connection with the contract; and inform the insured of the name of the insurer and the place of business of the insurer, before arranging or effecting the contract, or as soon as practicable after the contract is effected.[118]

This provision is grossly confusing, because why should the insured request the intermediary as to how much the insured is being charged by the intermediary for his services? Is it not the duty of the intermediary to inform the prospective consumer of his fees and charges? This is the basic right of the consumer. The consumer must know how the premium is computed. A consumer should not blindly pay whatever the consumer is charged by the intermediary. If this is so, it will promote injustice and encourage dishonest behaviour in the industry. For instance, an intermediary could load the basic premium with 'hidden charges' and the insured would never know, unless the insured is aware of this provision, how much he is charged by the intermediary for his services.

Then the question arises what happens with an illiterate consumer? How will he know how much the intermediary is charging him for his services? The illiterate consumer will never know this and will indefinitely suffer. On the other hand, even if the consumer knew of this provision (i.e., section 8(1)) and requested the intermediary to give particulars of any fees and other charges, how would the consumer know that the figures given are correct because the policyholder receives an invoice from the intermediary, not the

[109] Civil Action No. HBC 211 of 1998 (Anare Tuilevuka J.). *Also see Narend Prasad v. Dominion Insurance Co. Ltd.* [2019] Civil Action No. HBC 102 of 2016; *Sun Insurance Company Limited v. Joveci Korotama & Others* (2007) Civil Appeal No: HBA 24 of 2007L (J. Sosefo Inoke); *Brij Bhusan Lal v. Queensland Insuranc*e [1967] CA (V. P. Gould, J. A. Adams & J. A. Marsack) 27 Nov., 5 and 19 Dec., 203; *Rampati v. Queensland Insurance Co. Ltd.* (1964) Civil Jurisdiction, Supreme Court (C. J. Mills-Owens) 27–30 Jul., 25 Aug. 1964. Compare *Chaman Lal t/a Chaman Lal Transport v. Dominion Insurance Limited* (2013) Civil Action HBC No. 101 of 2013 (M. H. Mohamed Ajmer J.). A brief history of this case: A fire occurred on 2 Nov. 1986 in which the plaintiff's building and stock-in-trade in Ba (a province in the Western part of Viti Levu) was partly destroyed. The very next day, on 3 Nov. 1986 the plaintiff lodged a claim under an insurance policy it had with the defendant insurer. However, the defendant declined the claim on the ground that the plaintiff had committed a material non-disclosure. The material non-disclosure was allegedly committed through a lie that the plaintiffs made in response to a question on the standard proposal for fire insurance form. The plaintiffs then filed the action in 1989 seeking special damages for USD 6,600,000. The defendant contended that it is either an express or implied condition precedent that the plaintiff will disclose all material facts. A failure on the part of the plaintiffs to disclose a material fact would be a breach of a condition precedent which would entitle the defendant to avoid the contract and to reject any claim. The plaintiffs responded that the Fire Insurance policies in question contain no express stipulation that a material non-disclosure will entitle the defendant insurer to avoid the policy. The insurer may only avoid the policy if the duty to disclose materials facts was a condition precedent. A condition precedent can only be expressly stipulated. It cannot be implied into an insurance contract.

[110] Civil Action No. HBC 211, *supra* n. 109.

[111] [1997] FJCA 25, Civil Appeal No. ABU0048 of 1995.

[112] (1766) 3 Burr, Lord Mansfield 1095.

[113] [1899] 1 Q.B. 782, at 793.

[114] (1766) 3 Burr, *supra* n. 112, and *ibid*.

[115] Vanua Levu, formerly known as Sandalwood Island, is the second-largest island of Fiji. Located sixty-four kilometres (forty miles) to the north of the larger Viti Levu, the island has an area of 5,587.1 square kilometres (2,157.2 sq mi) and a population of 135,961 as of 2007, https://en.wikipedia.org/wiki/Vanua_Levu (accessed 17 Jun. 2021).

[116] Insurance Bill 1998 (Fiji) 532 *('1998 Bill')*.

[117] *Ibid*.

[118] *1998 Act, supra* n. 2, s. 8(1).

insurer? On the other hand, since the broker's premium schedule is incorporated in the policy jacket/document, the situation becomes more confusing. Therefore, there is no way the policyholder could verify the figures submitted. Hence, there is no such provision in the IA 2015 (UK), CI (DR) Act 2012 (UK), and the ICA 1984 (Cth).

2.5 Disclosure by a Broker Acting Under a Binder

While normally brokers represent their clients (the insured), they can also enter into an arrangement known as a 'binder arrangement', whereby the broker is authorized by the insurer to act as the agent of the insurer.[119] A broker who intends to act under a binder before dealing on behalf of the insurer must notify the insured in writing that the broker is acting as an agent of the insurer and not of the insured.[120] However, a broker must not enter into a binder arrangement with an insurer without the prior written approval of the Reserve Bank.[121] It appears that the legislative intent of this provision is to protect the interests of the insured. However, the drawback of section 9 of the 1998 Act is that traditionally insurance brokers are regarded as working on behalf of their clients, such an arrangement (binder agreement) would not only leave the insured without the services of the broker but cause a loss of confidence in brokers generally. Perhaps that is why there is no such provision in the UK and Australian legislation.

While section 6 of the 1998 Act imposes a duty on the intermediary to explain proposals and policies, there is no such requirement in the 1998 Act for insurers, except that an insurer is responsible for the conduct of its employees.[122] This is too vague because insurers have direct clients as well. Therefore, they should have the same level of responsibility towards consumers as intermediaries. On the other hand, section 56 of the 1998 Act provides that an insured is entitled to request the insurer or a broker to provide a copy of any prescribed return or report. According to section 2, 'prescribed means prescribed by regulations made under section 169 of the 1998 Act',[123] are required to be lodged with the RBF. This is vital for the consumer.

According to the IA 2015 (UK), the insurer must take sufficient steps to draw the disadvantageous terms in the policy to the insured's attention before the contract is entered into or the variation agreed.[124] A similar provision is found in the ICA 1984 (Cth), where it is stated that information about a contract of insurance may be given in writing to a person before the contract is entered into[125]; and if it is not reasonably practicable to give in writing, then orally or within fourteen days after the day on which the contract is entered into.[126] Furthermore, if the insured under a contract of insurance requests the insurer for policy documents, the insurer shall give to the insured a statement in writing that sets out all provisions of the contract.[127] While the legislative intent of the UK and Australian legislation is to protect the consumer, there is no such provision in the Fijian legislation. This provision is crucial for consumers.

2.6 Payment to Intermediaries

In contemporary societies, intermediaries mostly arrange insurance. Fiji is no exception. According to the RBF Insurance Annual Report 2019, the net premium income of the general insurance (i.e., direct and agent business) sector stood at USD 165.8 million,[128] while the total premiums handled by brokers alone stood at USD 207.4 million.[129] Section 5(1) of the 1998 Act states that '*if a contract of insurance is arranged by an insurance intermediary, payment to the insurance intermediary of money payable by the insured to the insurer*' under the contract discharges the liability of the insured to the insurer in respect of sums of money.[130] This is a pro-consumer provision that seeks to protect consumers from intermediaries who might not remit premiums to insurance companies, thereby causing a policy to lapse or be forfeited.

However, the problem lies with section 5(3) of the 1998 Act. Section 5(3) of the 1998 Act which states that: '*[P]ayment by an insurer to an insurance intermediary of money payable to an insured, whether in respect of a claim, return of premiums or otherwise, under or in relation to a contract of insurance, does not discharge any liability of the insurer to the insured in respect of those sums of money*'.[131] While section 5(3) of the 1998 Act is pro-consumer, the problem arises when there is a refund of premium. A broker may contra or off-set the refund with the amount that is owed to the underwriter; and transfer the refund amount into the broker's operating account. In other words, the net premium outstanding on the account of the underwriter is what the broker may pay. While there is no effect in the books of the underwriter, at the expense of the policyholder, the broker is enriched unjustly. On the other hand, the broker's books will also balance because the broker has accounted/treated the refund as an additional service or consultancy fees. Even microscopic scrutiny by auditors will not track or trace this fraudulent activity of the broker.

A similar provision is also found in the UK's IA 2015 and the CI (DR) Act 2012 (UK). Section 8(2) '*Other breaches*" Part(4) of the IA 2015 (UK) states that: '*If, in the absence of the qualifying breach, … the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid*'.[132]

Similarly, section 9(2) 'Variations' of the UK's IA 2015 (UK) states that: '*If in the absence of the qualifying breach, the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, but must in that event return any extra premium paid*'. In addition, section 9(1) of Part 7 of the CI (DR) Act 2012 (UK) states that '*If either party terminates the contract under this paragraph, the insurer must refund any premiums paid for the terminated cover in respect of the balance of the contract term*'.[133] The Fijian legislation is silent on how a refund is to be made to policyholders.

[119] *Ibid*., s. 9(2).
[120] *Ibid*., s. 9(3).
[121] *Ibid*., s. 9(5).
[122] *Ibid*., s. 4(2).
[123] *See* s. 169 'Regulation' of the Insurance Act 1998 (Fiji).
[124] *IA 2015* (UK), *supra* n. 27, s. 17(2).
[125] *ICA 1984* (Cth), *supra* n. 31, s. 69(1).
[126] *Ibid*.
[127] *Ibid*., s. 74(1).
[128] Insurance Report 2019, *supra* n. 7, at 23.
[129] *Ibid*., at 33.
[130] *1998 Act, supra* n. 2, s. 5(1).
[131] *Ibid*., s. 5(3).
[132] *IA 2015* (UK), *supra* n. 27, s. 8(2), Sch. 1.
[133] *CI (DR) Act 2012* (UK), *supra* n. 49, s. 9(1).

2.7 Duty of the Intermediary to Remit Premiums

Under the 1998 Act, the intermediary is supposed to remit premiums to underwriters within thirty days from the date of receipt. Section 7(2)(b) of the 1998 Act requires intermediaries to remit any premium received from an insured to the insurer within thirty days from the date of receipt. However, there is no time limit for insurers to settle a claim. This is discriminatory as the insurer, to frustrate the insured, can deliberately delay settlement. This delay will cause inconvenience to policyholders whose property is encumbered by a financier. For instance, if a taxi is involved in an accident, and the taxi is under a bill of sale to a bank, how will the owner meet his obligation to the bank unless the taxi is running? Therefore, any delay by the insurer will not only cause financial hardship for the policyholder but also jeopardize his creditworthiness.

During the Parliamentary debate on the Insurance Bill 1998 (1998 Bill), a Member of the opposition Hon. Harish Sharma said: '[A]ny legislation that is for the good of the consumers is welcomed by this side of the House'.[134] He added that: '[T]he most frequent complaint of the insured are the excuses made by insurance companies in settling claims. Regrettably, the Bill does not address that'.[135] He insisted that 'if this could be included in the Bill as both sides of the House have agreed that one of the biggest complaints against insurance companies is their failure to settle claims promptly'.[136] He requested that some provision be given whereby insurance companies, where they have no genuine defence, are required to settle claims within a specified time. He finally suggested taking the Bill to a select committee to consult the consumers as in the review process only insurance institutions, other organizations in Fiji, and abroad have been consulted.[137] The question arises is that who needs the protection of the insurance institutions and organizations in Fiji and abroad, the insurers or the insured? It is the insured who is paying, therefore, why were they not consulted? This defeats the profound purpose of the legislature. Although the Members of Parliament highlighted the discrepancy in the Bill, it was ignored.

This shows that even before the 1998 Bill was passed, the legislature knew that the Bill had multiple loopholes, especially in relation to consumer protection. The loopholes caused considerable setbacks to policyholders in terms of the imbalance between the interests of insurers and the insured.

On the other hand, as pointed out by Hon. Harish Sharma, consumers were not consulted. However, why? Why they were not consulted, even when the Honourable Member requested the House of Representatives to take the 1998 Bill to the select committee for consumers' views on the Bill? What was the purpose of the Bill when the consumer interest was left to rot in vain? To date, the repercussion of the inaction of the House of Representatives is still haunting consumers and prospective consumers. According to the RBF, the 1998 Act is currently being reviewed through the assistance of the IMF's Pacific Financial Technical Assistance Centre,[138] but why now, when the discrepancies were apparent back in 1998 and continued to date. Whether this time consumers will be consulted or not remains uncertain. According to the RBF Annual Report, the Pacific Financial Technical Assistance Centre has been working on the review for quite some time, but public consultation is yet to be seen. The UK and Australian legislations do not observe the same or similar provisions in their inquests to regulate the insurance sector.

2.8 Restrictions as to Receipt and Payment of Remuneration to Brokers

Section 10(1) of the 1998 Act prohibits the forms of remuneration that an insurer may give a broker. The provision does not allow a broker to receive from an insurer a gift, benefit, or other rewards (however described) except for remuneration for arranging or effecting a contract of insurance. Under section 10(2) of the 1998 Act, an insurer must not pay a broker, and the broker must not receive from an insurer, remuneration at a rate that is altered from the normal rate, for arranging or effecting a contract of insurance with the insurer. The issue here is that the RBF and the underwriters only know these rates. The public is not aware of these rates because they are not published. While it is the primary duty of the RBF to ensure that the insurance industry remains viable, there is no guarantee that the rates are fair to consumers. Eventually, the burden of the rate is transferred to the consumers. Finally, the question arises is that whether the RBF has any mechanism in place to monitor the adherence of insurers and/or brokers to section 10(1) of the 1998 Act? There is no restriction as to the receipt and payment of remuneration to brokers in the UK and Australia.

Section 65(5) of the 1998 Act deals with the broking accounts. The 1998 Act states that: '*Interest or other income received from an account maintained under subsection (1) may be retained by the broker for the broker's own benefit and need not be retained in the account*'.[139] This section is biased towards intermediaries in the sense that it promotes intermediaries, in particular brokers, to hold premiums in their insurance broking account, as long as they can, to earn interest on trust funds. This is unethical because a trust fund[140] is a fiduciary fund, i.e., it is held on behalf of someone, and in an insurance context, on behalf of the underwriters. This section implies that underwriters' are deprived of funds for a certain period, and sometimes, not paid as required under the 1998 Act.[141] This affects the creditworthiness of the policyholder because, from the underwriters' perspective, the policyholder has not paid the intermediary. As far as interest on the trust account is concerned, it should be legislated that such monies are remitted to charitable organizations (perhaps every quarter when returns are submitted to the RBF), because, in the first place, the trust funds are not owned by the intermediaries. Therefore, technically the intermediaries have no right to the interest earned from the trust account, as this will encourage/promote unjust enrichment. In the absence of

[134] *1998 Bill, supra* n. 116, at 530.
[135] *Ibid.*
[136] *Ibid.*
[137] *Ibid.*
[138] Insurance Report 2019, *supra* n. 7, at 15.
[139] *1998 Act, supra* n. 2, s. 65(5).
[140] Trust Accounts Act 1996 (Fiji), s. 2(1). 'Trust account' means a trust account established and kept under s. 5, https://www.google.com/search?q=what+is+a+trust+fund&oq=what+is+a+trust+fund&aqs=chrome..69i57.14687j0j7&sourceid=chrome&ie=UTF-8 (accessed 29 May 2021).
[141] *1998 Act, supra* n. 2, s. 7(2)(b).

any such provision in the UK and Australian legislation, it is presumed that the trust accounts operate on a similar basis as in Fiji.

3 Conclusion

The insurance industry plays a critical role in the economy. The success of the insurance industry, like any other industry, depends on consumer satisfaction. Since the insurance industry in Fiji is highly regulated, however, legislation does not protect the policy-holder's rights. According to section 6 of the 1998 Act, intermediaries are required to explain the proposal and policies to insurance consumers. However, there is no such requirement for insurers. Section 100(6) of the 1998 Act states that if an insurer's licence is cancelled, it must be published in the Gazette and a daily newspaper circulating in Fiji. However, there is no such requirement for intermediaries under the 1998 Act. Section 6 of the 1998 Act should be amended to include insurers; and section 101(1) of the 1998 Act should include intermediaries. Intermediaries play a vital role in insurance placements and, as such, there should be adequate checks and balances on whether the provisions of the 1998 Act are complied with. Consumer satisfaction by far is like a shipwreck, unless consumer interests are adequately protected. To achieve an optimum level of consumer satisfaction, legislation, that is, indiscriminate or one that strikes a fair balance between the interests of all parties is crucial. Not one that is archaic, unclear, and unfair.