

The impact of the court of public opinion - good and bad

By [Jonathan Kaiser](#)

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In the age of social media proliferation, internet sensations are born overnight and reputations can be destroyed in an instant. Intermediaries and insurers have to navigate these turbulent waters with great care. The court of public opinion - whether factually and legally correct or not - can ruin a good business with enough public support, or depending on your point of view, exact righteous justice.

Recent cases which illustrate this include the very public saga involving a large insurer who initially refused to pay a life policy, but eventually capitulated due to pressure from social activism. Another example is the now infamous Please Call Me case. Whether you regard either of these cases to be a victory or a defeat, the undeniable fact is that public opinion played an important role in achieving the end result. It's possible that these disputes could have been avoided if the contracts which outline the duties of each party had been properly explained, understood and drafted.

Lack of understanding

While the insurance contract legally defines the terms of agreement between the client and insurer, more often than not, it is a lack of understanding of the technical terminology and legal jargon used as well as the processes involved at claims stage that inevitably lead to disgruntled clients. In some instances, it can lead to unrealistic expectations from brokers and members of the public.

In an ideal world, contracts would not require interpretation and its contents would speak for itself, yet this is often not the case and contractual interpretation disputes are the order of the day. Parties often pay very little attention to the terminology they use to define their respective obligations towards each other. When it comes to insurance contracts, clients may fail to appreciate the precise terms of the agreement, more often relying on what they perceive they are buying and what the broker had communicated to them.

Meeting expectations

South Africa has already enacted various pieces of legislation all aimed at providing greater protection and accountability unto clients in the financial services sector. It is now time to evaluate whether we are meeting the requirements that are expected of us, not only in drawing up contracts which clearly denote the rights and responsibilities of each party, but also by constructive engagement between insurer, broker and client. This applies not only to the products that we sell to clients and their expectations thereof, but also to what the insurer expects from the client in performance of their obligations under the contract.

Values

Renowned author of *Writing It Right*, Hon. Gerald Lebovits said it best when he wrote: "Poor legal writing might result in an injustice for a client: a judge might misunderstand what a lawyer is seeking; an adversary might seize on an ambiguity. To avoid these problems, strive for perfection."

Public opinion ultimately represents the values of society and the values of society determine whether a contract is deemed to be against public policy. These values are, however, not cast in stone and may evolve over time. It is therefore important that we as intermediaries and insurers are aware of these progressions and are ready to meet the resultant challenges.

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