

## IT WASN'T ME!

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Remember this popular song by “SHAGGY” .... **It Wasn't Me ....?**

*“Never admit to a word when she says*

*And if she claims and you tell her - baby no way*

*She even caught me on camera – **It wasn't me***

*Why should she believe me?*

*When I told her **it wasn't me**”*

Sometimes it seems that Policy Holders and Intermediaries adopt this attitude too ... although this time it's not so funny.

Intermediaries have great responsibilities and obligations. They are governed by FAIS requirements and are required to perform the necessary Needs Analysis and keep a Record of Advice..

How does this impact upon their **Domestic** Clients?

Many cases go before the Ombudsman where the Intermediary had not followed on their Domestic portfolio the same stringent practice usually applied to commercial policies.

Failure to keep a correct Record of Advice at Inception, Renewal and Endorsement stages may leave the Intermediary open to Professional Liability exposure and possible financial loss to the Insurer, Intermediary and Policy Holder alike. Intermediaries are expected to conduct themselves as professionals, not peddlers.

Who do you think would be liable in the following scenario?

At inception, the private residence may be such, but as the policy ages the owner may move out and place a tenant in the premises. Due to the changing economic environment perhaps the policy holder decides that more income can be made by converting the private residence into a boarding house – still residential – but he does not advise his Intermediary or Insurer of this change of use. The policy holder does not maintain strict control over his tenants and through tenant negligence the house burns down. The Insurer rejects the claim, and the Intermediary and Policy Holder are in conflict as no Renewal documentation reminds the policy holder of the policy condition requiring the insured to advise the intermediary/insurer of the change of use. Who do you think would be liable?

Look at the following examples from the Ombudsman where there has been conflict between Insurer, Intermediary and Policy Holder ....

Where cover is conditional on the fitment and maintenance of proper vehicle security the onus is on the policy holder to comply, but this aspect must be discussed and made clear to the policy holder at inception. Does he get reminded of this at renewal ?

Nominated Driver / Regular Drivers conditions are also not without difficulties. It should be made clear to the policy holder that a **regular driver** policy will also allow any another licensed driver to drive the vehicle but not so with a **nominated driver** policy where there is only cover whilst driven by that nominated person.

Here we go again about the same old topic of Average. Why is it that this is always an issue? Even if Insurers process a 10% annual inflation sum insured increase, this may not be adequate bearing in mind the devaluation of the Rand and Value Added Tax. Policy holders need to be reminded of their potential financial loss in the event of a claim.

The incidence of claims by Intermediaries against their Professional Indemnity insurance is increasing as consumers are becoming more litigiously aware due to FAIS and the Consumer Protection Act and the fact that there is no fee charged for lodging complaints with the FAIS Ombud.

Main reasons for these Professional Indemnity claims are, basically - Not following the correct FAIS procedures - Not keeping a full record of client interactions or voice loggings of conversations.

The Ombud will always consider TCF and the onus of proving the record of advice falls squarely to the intermediary and Insurer.

So who was responsible ? Well. **"It Wasn't Me"**.