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AN ANALYSIS OF THE IMPACT OF THE POLICYHOLDER PROTECTION RULES (SHORT TERM INSURANCE), 2018 ON CONSUMER CREDIT.

By:

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Submitted: 2019

Submitted in partial fulfillment of the requirements for the degree

MAGISTER LEGUM (LLM)

In

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In the

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at the

UNIVERSITY OF JOHANNESBURG

UNIVERSITY OF JOHANNESBURG

SUPERVISOR: PROF. D. MILLARD

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LIST OF ABREVIATIONS

"CPA" – Consumer Protection Act

"FIA" – Financial Intermediaries Association

"FIC" – Financial Intelligence Centre

"FSB" – Financial Services Board

"FSCA" – Financial Sector Conduct Authority

"FSOC" – Financial Stability Oversight Committee

"new PPR's" – Policyholder Protection rules (Short Term Insurance Act), 2017

"NCA" – National Credit Act

"NCAA" – National Credit Amendment Act

"NCR" – National Credit Regulator

"PPR's" – Policyholder Protection Rules

"SARB" – South African Reserve Bank

"STIA" – Short-Term Insurance Act

"LTIA" – Long-Term Insurance Act

"RDR" – Retail Distribution Review

"TCF" – Treating Customers Fairly

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CHAPTER 1: INTRODUCTION AND RESEARCH QUESTION

1.1 Introduction

Various factors determine the spending and saving behaviour of a community, such factors being the age, standard of living, economical flexibility, tradition and the needs of people, whether such needs are material or social.[1] It is important to conceptualise the idea that the fluctuation of consumer income leads to the need and the ability to spend future income in the present and thus creating credit.[2] The greater access to credit would provide Small- medium Enterprises (SmE's) and their owners more obtainable opportunities, greater access to capital ventures and the sustainability of personnel. The availability of credit leads to consumers having the need and the ability to spend money now instead of later, however in the same breath binding themselves to a future obligation that leads to the financial despair of many individuals in South Africa.[3] The Policyholder Protection Rules (PPRs) were established in order to provide a consumer the opportunity to make informed decisions on their short-term insurance contracts as well as to ensure that businesses follow procedures fairly and with due diligence and care. This allows consumers a more favourable hand when considering consumer credit.

This study will indicate by way of literary scrutiny, the impact that the PPRs (Short-Term Insurance), 2018 have on consumer credit in South Africa. The PPRs play an essential part in the regulation of consumer credit insurance under the Short-Term Insurance Act[4]. These rules have been implemented and strive for the broader protection of consumers under various governmental initiatives such as "TCF" (treating customers fairly) where the spirit of the law encompasses fair treatment rather than the letter of the law.[5] Another initiative being the Twin-Peaks system which entails the reclassifying or reshaping of regulatory governmental bodies into two broad systems, one being the prudential authority and the second being the market conduct authority.[6] However, the "new" Policyholder Protection Rules are considered by many to be a "regulatory overkill".[7] Learned members of the legal fraternity insist that although the drafting of the rules could be considered as simple text, some ideas and terms are vague which causes confusion and resembles to grey-area.[8] In comparison to the insurance laws of the United Kingdom we realise that although they applied similar views, their regulatory framework is more direct and precise which ultimately leads to more fair outcomes for consumers.[9]

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[1] Van Der Walt and Prinsloo "Consumer credit in South Africa" 1995 *RESBANK* 26.
[2] n 1 above 26.
[3] n 1 above 26.
[4] 53 of 1998.
[5] *Personal Finance* (14 Jan 2017) 4-5.
[6] n 5 above 4.
[7] https://www.iol.co.za/personal-finance/more-protection-for-insurance-policyholders-12461141 (18-12-2017).
[8] n 5 above 5.
[9] n 5 above 5.

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1.2 Research question

The question this dissertation aims to ask is whether the consumer credit insurance rules under the 2018 PPRs for short term insurance are clear, serve a purpose and will improve the plight of consumers who take up credit insurance.

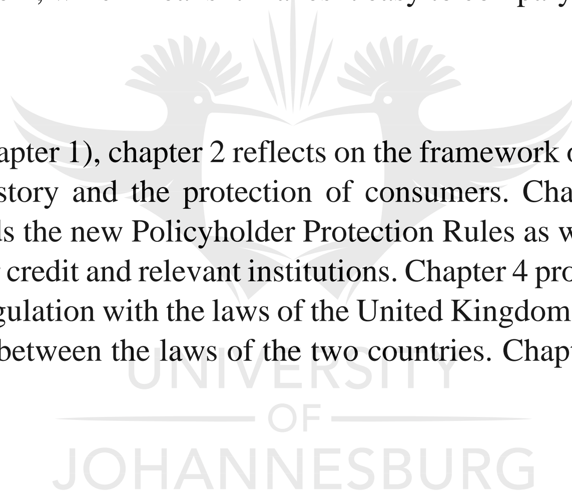
1.3 Reseach methodology

In order to answer the research question, this dissertation utilises a literature review. This review considers the conceptual framework of consumer credit as well as the expedition of the Policyholder Protection Rules and the related impact it has on consumer credit. This all will be discussed with reference to legislation, case law and the most important literature on the subject.

In addition, this dissertation uses a comparative study with the law of the United Kingdom. The relevant aspects such as the regulatory framework, fairness and ultimately the protection of consumers will be outlined in this paper. The reason for using the UK as a comparative jurisdiction is because SA insurance law has been greatly influenced by English law and in the UK they also utilise the Twin Peaks sytem, which means it makes it easy to company market-conduct regulation between SA and the UK.

1.4 Overview of chapters

After the introduction (chapter 1), chapter 2 reflects on the framework of consumer credit in South Africa along with the history and the protection of consumers. Chapter 3 canvasses the most important changes towards the new Policyholder Protection Rules as well as the impact that these rules impose on consumer credit and relevant institutions. Chapter 4 proposes a comparative aspect of credit and insurance regulation with the laws of the United Kingdom, focusing on the regulatory and practical differences between the laws of the two countries. Chapter 5 provides a conclusion of this paper.



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CHAPTER 2: THE CONCEPTUAL FRAMEWORK ON CONSUMER CREDIT

"Old style thrift has gone out of fashion. The attitude is,

"I want it and I want it now"

Governor, Bank of England,

Quoted in the Sunday Times, 17th June 1990

2.1 Consumer credit

Consumer credit as the definition proposes is "credit advanced to consumers for the purchase of goods and services".[10] Although any type of personal loan could be regarded as consumer credit, the term "consumer credit" is usually labelled as the unsecure debt that is taken on to buy everyday goods and services.[11] The term is usually not used to describe the purchase of a house as such purchase would be done via a secured mortgage loan, however, such term can be used interchangeably between various scenarios.[12] Consumer credit is also regarded as consumer debt.[13] Consumer credit is usually extended by banks, retailers or other financial entities which enables consumers to use such extended credit now with the obligation to repay the credit in the near future with additional interest added.[14] It is important to note that credit insurance is insurance taken out to protect consumers against bad debt.[15] The whole process consists of a tripartite transaction. When considering a "normal" transaction entered into by a consumer, the first part is the goods or services acquired by the consumer (CPA), secondly the credit issued by the credit facility (NCA), this is where consumer credit plays a role and lastly the insurance acquired for such credit (STIA), the distinctions are elaborated further in this paper.

Logically, one cannot envision the advantages of consumer credit, however, there are many such as providing the consumer to attend to any emergency for example, a car break down or the late tariffs on school fees as well as the fact the credit is easily granted and cashless.[16] The sad truth is that the disadvantages outweigh the advantages by far.[17] The cost to consumers who end up failing to pay the extended credit leads to them accruing additional interest charges on late payments.[18] The average annual percentage rate on new offers of credit cards was 19.24% as of April 2019.[19]

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[10] Stevenson *Oxford Dictionary of English* (2010). See also *National Credit Regulator v Opperman and Others* 2013 2 SA 1 (CC) which defines a credit transaction, "as described in subsection (4) An agreement, irrespective of its form but not including an agreement contemplated in subsection (2), constitutes a credit transaction if it is any other agreement, other than a credit facility or credit guarantee, in terms of which payment of an amount owed by one person to another is deferred, and any charge, fee or interest is payable to the credit provider in respect of (i) the agreement; or (ii) the amount that has been deferred."

[11] https://www.investopedia.com/terms/c/consumercredit.asp (20-08-2019).

[12] n 11 above.

[13] n 11 above.

[14] n 11 above.

[15] n 10 above.

[16] n 11 above.

[17] n 11 above.

[18] n 11 above.

[19] n 11 above.

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Retail store credit cards averaged 25.74%.[20] A single late payment can boost the cardholder's interest rate even higher.[21] The supply of consumer credit causes a "rat race" for those consumers who inevitably struggle to make the needed payments. But first, some history on consumer credit.

2.2 History of consumer credit regulation

The history of consumer credit in South Africa is parallel to the developments in other legal systems and is spawned from various historical roots. Not to be mistaken by the fallacy of numerous individuals from the legal fraternity to state that consumer credit is a relative modern creation with very little background.[22] South Africa is remarkably known as one of the countries to have a hybrid legal system that comprises of so many other legal systems such as Roman law, Roman-Dutch law, English law, indigenous (African) law and modern legislation comprised from various constitutions.[23] It is said that consumer credit is significantly influenced by economic, social, political and religious considerations.[24] However, the regulation of consumer credit is a difficult phenomenon as regulation is two-fold. One being that consumers are entitled to protection and secondly that creditors along with their investors and partners are entitled to a fair profit.[25] Therefore regulation from an objective view point can become a difficult task. As Feldman once put it: "These are issues on which it is possible for men of good faith to differ substantially."[26]

Consumer credit is regulated by the National Credit Act[27] and various other bodies such as the National Credit Regulator.[28] Over the recent years starting from the dawn of the 20th century credit laws have been transformed and forged to provide the ultimate basis for consumer protection. The need for such reform has come from the ineffectiveness of previous credit legislation especially in the modern complex society we live in today.[29] Previous legislation such as the Credit Agreements Act[30] and the Usury Act[31] has been trampled by the NCA which has been assented by the President and came into operation on the 10th of March 2006.[32] The purpose of the NCA is to promote a fair and non-discriminatory marketplace for access to consumer credit, to prohibit certain unfair marketing practices and reckless credit granting.[33] Simultaneously, the NCA promotes the protection of consumers with regards to consumer credit.[34]

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[20] n 11 above.
[21] n 11 above.
[22] Otto "The history of consumer credit legislation in South Africa" 2010 *Fundamina* 257 – 273.
[23] Hahlo and Kahn *The South African Legal System and Its Background* (1968) 578; Van Zyl *Beginsels van Regsvergelyking* (1981) 291.
[24] n 22 above 258.
[25] n 22 above 257 - 273.
[26] Feldman *Consumer Protection Problems and Prospects* (1976) 47.
[27] 34 of 2005 (hereinafter referred to as the NCA).
[28] Renke "The National Credit Act: new parameters for the granting of credit in South Africa" 2007 *Obiter* 230.
[29] n 28 above 230.
[30] 75 of 1980.
[31] 73 of 1968.
[32] n 28 above 230.
[33] n 28 above 230.
[34] n 28 above 230.

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2.3 Contemporary consumer credit regulation

The NCA and for the purposes of this paper, the Short Term Insurance Act[35] including the amendments thereto (Policyholder Protection Rules) play a big role in the protection of consumer credit. As society changes so the need arises for legislature and statute to make amendments and changes in order to bestow better protection for consumers and their rights. The NCA has been implemented in order to accommodate the much needed transformation of the regulation in the credit industry. The National Credit Amendment Act[36] was enacted on the 13th March 2014 pursuant to the NCA being assessed by the Department of Trade and Industry.[37] The assessment indicated that the NCA is one of the finest pieces of legislation passed by our government.[38] The assessment also indicated several gaps shown in the draftsmanship of the legislation and therefore it was amended to clarify certain provisions and aims originally set out by the NCA.[39] The NCA as a general rule applies to any and every credit agreement between parties which is dealing at arm's length (meaning an agreement made freely and independently of each other) and which was concluded in the Republic of South Africa or had an effect within the Republic.[40] There are certain exclusions contained in Section 4 of the NCA which is not considered a credit agreement in terms of the NCA.[41] Section 4 of the NCA states the following:

> "The NCA applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except- a credit agreement in terms of which the consumer is:
>
> *(a)(i)* A juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of Section 7(1);
>
> *(ii)* The state; or
>
> *(iii)* An organ of state;
>
> *(b)* A large agreement, as described in Section 9(4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of Section 7(1);
>
> *(c)* A credit agreement in terms of which the credit provider is the Reserve Bank of South Africa;

[35] 53 of 1998.
[36] 19 of 2014 (hereinafter referred to as NCAA).
[37] https://home.kpmg/za/en/home/insights/2014/08/national-credit-amendment-act.html (19-08-2014).
[38] n 37 above.
[39] n 37 above.
[40] n 28 above 230.
[41] The National Credit Act 34 of 2005.

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> *(d)* Or a credit agreement in respect of which the credit provider is located outside the Republic, approved by the Minister on application by the consumer in the prescribed manner and form."[42]

The NCA places enormous responsibility on credit providers to adhere to the regulations of credit law in South Africa.[43] Failure to comply with the responsibilities bestowed upon them by the NCA would lead to unwanted consequences where a Tribunal can decide to either suspend the credit agreement or render it *void ab initio.*[44]

2.4 Consumer Protection

It was once believed that consumer protection and the law it binds to was outdated and fragmented. However with the ever increasing legislation to protect consumers that was all left in the past. At present the creditors are the targeted group of people who need to ensure that they follow all the possible steps in order to ensure that the consumer shall not be prejudiced at any time during their agreement. Consumers hide under a blanket of protection provided to them by several pieces of legislation namely the National Credit Act[45], the National Credit Amendment Act[46], The Consumer Protection Act[47] and the Policyholder Protection Rules provided for by the Short – and Long Term Insurance Acts. The reason for this abundance protection lies by the fact that the consumers are unable to defend themselves without it. Majority of consumers are not financially inclined to walk the litigation path and fight their battles in court.[48] Litigation is notoriously expensive and for the sums that are usually involved, it does not make economic sense to go the litigation route.[49] Therefore, legislation was promulgated in order to provide *bona fide* protection for all consumers.

One of the pieces of legislation that plays a vital role in the protection of consumers alongside the NCA is the Consumer Protection Act[50]. The CPA came into effect on 21 March 2011.[51] The objective and purpose of the CPA is to promote fair business practices and to protect all consumers from various unwanted situations, being any situation which would tend to be unconscionable, unfair, unjust, or any other improper practices and deceptive, misleading or fraudulent actions.[52]

The CPA vastly deals with the deception of consumers in Part F of the Act, where it is of vital importance as to how a credit provider and consumer present themselves during an agreement.[53] At no point in time may a credit provider induce a consumer to enter into a credit agreement and if so, such a circumstance will be actionable via delict.[54] However it is extremely difficult for

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[42] n 41 above.
[43] Pienaar "Credit providers beware" 2016 *Without Predudice* 22 – 23.
[44] n 43 above 22 -23.
[45] 34 of 2005.
[46] 19 of 2014.
[47] 68 of 2008.
[48] Harvey and Parry *The Law of Consumer Protection and Fair Trading* (1994) 18.
[49] n 48 above 18.
[50] 68 of 2008. Hereinafter referred to as the "CPA".
[51] Consumer Protection Act 68 of 2008.
[52] Woker "Why the need for consumer protection legislation?" 2010 *Obiter* 217 – 231.
[53] n 51 above.
[54] n 52 above 220.

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consumers to prove that certain "promises" were made by the credit providers and even more so difficult if the parties have entered and signed an agreement stating that the written agreement constitute as the whole and entire agreement between the parties.[55] The failure to provide consumers with the correct and proper information was one of the reasons as to why the NCA and the CPA was promulgated.[56] It is important to note that the CPA does not apply to any transaction that constitutes a credit agreement under the NCA.[57]

Another factor dealt with in Part F of the Act is "unfair contract terms".[58] In South Africa there is legislation that deals with almost every type of agreement in some way, shape, form or another whether it is a credit agreement,[59] sale of land and instalments,[60] insurance warranties[61] and penalty provisions.[62] In most instances consumers are given a standard form or template contracts which can sometimes be several pages long, filled with small print and confusing language in which they are asked to sign.[63] Majority of times consumers are asked to sign contracts to which they have no recollection of what they are attesting to. Consumers who end up signing such standard form contracts find it very difficult to prove that they should not be bound by the terms. The courts have held in *Afrox Healthcare Bpk v Strydom*[64] and *KPMG Chartered Accountantss (SA) v Securefin Ltd*[65] that if a consumer has signed a document or agreement in which the words have appeared above the signature it is believed that the consumer has acknowledged the contents and agree to it.[66] It is only in very limited instances where the consumer has been misled by the creditor that the terms would not apply.[67]

The courts will not accept or tolerate any contracts that are deemed to be clearly one-sided or oppressive that they are contrary to public policy.[68] However, the onus will be on the consumer to prove that the terms of the contract which they do not want to enforce are against public policy.[69] The courts may in exceptional circumstances interfere with the contract concluded even if a clause is a reasonable one, the court may refuse to uphold it in the light of the specific circumstances of the case.[70] A factor which the court may take into consideration is the unequal bargaining position

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[55] n 52 above 220.
[56] n 52 above 220.
[57] Van Eeden and Barnard *Consumer Protection Law in South Africa* (2017) 50 – 51. "A credit agreement in terms of the NCA means and agreement that satisfies all the criteria set out in Section 8 of the NCA, a transaction in terms of the CPA means an agreement for the supply of goods and services in terms of which an agreement is an arrangement or understanding between two or more parties who wish to establish a relationship in law between or among them."
[58] n 51 above.
[59] The National Credit Act 34 of 2005.
[60] Alienation of Land Act 69 of 1981.
[61] Section 59 of the Long Term Insurance Act 52 of 1998; and Section 53 of the Short Term Insurance Act 53 of 1998.
[62] Conventional Penalties Act 15 of 1962
[63] n 51 above.
[64] 2002 6 SA 21 (SCA).
[65] 2009 4 SA 399 (SCA).
[66] *Afrox Healthcare Bpk v Strydom* 2002 6 SA 21 (SCA); *KPMG Chartered Accountantss (SA) v Securefin Ltd* 2009 4 SA 399 (SCA).
[67] n 65 above.
[68] *Sasfin v Beukes* 1989 1 SA 1 (A); *Baart v Malan* 1990 2 SA 862 (E).
[69] n 52 above 223.
[70] *Barkhuizen v Napier* 2007 5 SA 323 (CC).

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of the parties.[71] Both the NCA and the CPA have substantial parts dealing with consumer protection relating to unfair contracts and provisions. The introduction to these pieces of legislation altered the way in which courts deal with contractual disputes and provided for significant consumer protection.

2.5 Evaluation of legislation

This chapter showed that consumers have the benefit of having several statutes that aim to provide protection. It is submitted that although consumer protection should be the number one priority of all financial institutions, it must be made aware that over regulation of consumer protection might just lead to the detriment of the consumers we are so earger to protect. A difficult concept to grasp is the tripartite transaction. When considering a "normal" transaction entered into by a consumer, the first part is the goods or services acquired by the consumer (CPA), secondly the credit issued by the credit facility (NCA) and lastly the insurance acquired for such credit (STIA). In order to provide simplification with regards to the above a distinction must be made between the first/second part and credit insurance in itself. Credit insurance is completely separate from the goods/services or the credit acquired by the consumer.

[71] Per Ngcobo J 341B in *Barkhuizen v Napier* 2007 5 SA 323 (CC).

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CHAPTER 3: THE POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2018

3.1 Background and history

South African insurance is currently regulated by the Long-Term Insurance Act[72], the Short-Term Insurance Act[73] and the 2017 Insurance Act[74]. This is confusing as it is a challenge to find which rules apply. The majority of sections of the STIA and the LTIA have been repealed, save for those sections that enable the legislature to enact the policyholder protection rules[75]. These PPR's came into operation on the 1st of July 2001, these were the first set of rules promulgated under the STIA.[76] The PPR's were initially set out in order to provide for a better decision making opportunity regarding any short term insurance products or services and to ensure that insurers operate according to the TCF principles and act within the best interests of the policyholders.[77] The PPR's consists of various rules in order to above all provide protection for policyholders. The Short-Term Insurance Act[78] has been amended by the Financial Services Laws General Amendment Act[79] in order to close any regulatory gaps, to effect much needed improvements to certain provisions and to provide for increased supervisory capabilities of governmental bodies.[80]

The 2001 PPR'S regulated policyholder protection and short-term insurers by initiating a "hands-on" approach to regulation.[81] The rules started vague and presented various challenges along the way. There were limited protection for policyholders in terms of these PPR's who dealt directly with an insurer without the prior consulting of an intermediary, however, the policyholder may request that all right be maintained which would not hinder the protection of the policyholder.[82] The insurer is obligated to inform the policyholder of all his/her rights and responsibilities.[83] It was stated that all intermediaries have a duty to disclose a summarized version of all the rules contained in the PPR's, at the most earliest and sensible opportunity before concluding any agreement with the policyholder, however it must be noted that a policyholder may waive such disclosure and that same disclosure does not apply to any sort of direct offerings from an insurer.[84] Not only does the independent intermediary have to disclose a summary to the policyholder but they are also obligated to disclose other particulars such as identity, education, experience, the

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[72] 52 of 1998.
[73] 53 of 1998.
[74] Hereinafter referred to as "IA".
[75] Hereinafter referred to as "PPR's".
[76] GG no. 7009.
[77] n 76 above.
[78] 53 of 1998.
[79] 45 of 2013.
[80] Financial Services Laws General Amendment Act 45 0f 2013.
[81] n 76 above.
[82] The Short-term Insurance Act 53 of 1998.
[83] n 82 above.
[84] n 82 above.

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product, the companies that they might represent as well as to state the legal capacity in which they operate.[85]

The policyholder who enters into an insurance agreement was entitled to be informed about the consequences of their decision, this includes any and all costs involved, affordability, the impact that the agreement might have on their insurance portfolio as well as the contractual terms involved in the agreement.[86] It is known that an insurer is obligated to communicate at least once with the policyholder in order to disclose all needed and relevant information.[87] All disclosures or variation of any agreement will have to be made in writing or be reduced to writing and be presented and delivered to all relevant policyholders.[88]

The insurer is demanded to ensure that it accredits any products or services it acquires from an independent intermediary to ensure that the product or service is aligned with regulation.[89] If a policyholder is dissatisfied with any product or service provided by the insurer or independent intermediary which does not meet the inherent rules set out in the PPR's, the policyholder could lodge their complaint with either the STI ombudsman or the relevant compliance officer, if the policyholder is still not satisfied it could seek comfort at the Registrar of the Financial Services Board.[90] It must be noted that any intermediary or insurer who fail to comply with the requirements set out by the Rules would be liable and could ultimately face harsh penalties and/or prosecution.[91] An insurer will be responsible to inform and disclose any and all relevant information to all relevant policyholders regarding the entering or variation of an agreement, and that such disclosures be made prior to the effective date of said entering or variation as per the provisions set out by the Rules.[92] It must further be noted that the disclosure of any document or information by a relevant insurer does not prohibit a policyholder from lodging a complaint based on false or misleading disclosures, non-disclosures or any other relevant ground recognised by our law.[93]

The 2001 PPR's have been amended several times in the past, the first amendment being the Policyholder Protection Rules (Short-term Insurance), 2004 followed by the amendment in 2011. The newest relation to the PPR'S is the Policyholder Protection Rules (Short-Terms Insurance), 2018.[94] The new Insurance Regulations which were made by the Minister of Finance and the new PPR's under the LTIA (Long-Term Insurance Act) and the STIA (Short-Term Insurance Act) made by the Registrar of Insurance were published by the FSB (Financial Services Board) and the National Treasury. The draft regulations and PPRs were enacted in parliament on the 2nd of

[85] n 82 above.
[86] n 82 above.
[87] n 82 above.
[88] n 82 above.
[89] n 82 above.
[90] n 82 above.
[91] n 82 above.
[92] n 82 above.
[93] n 82 above.
[94] The Policyholder Protection Rules (Short-Term Insurance), 2018 now referred to as the "new PPR's".

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Novermber 2017, whereas parliamentary review ended on the 2nd of December 2017. This lead to the new regulations and PPR's to come into effect and operation in January 2018.[95]

3.2 Purpose and objectives

The new PPR's and Regulations form part of a bold governmental program to provide for the improvement of the market conduct in the sector, in order to ensure fair treatment of customers, appropriate incentives and remuneration and to address conduct of business risk and any abuse identified through observation.[96] According to National Treasury, "the Treating Customers Fairly[97] framework is transforming the way in which the supervision of market conduct happens. Being implemented by the Financial Services Board,[98] TCF is an activities- based, cross-cutting and outcomes-driven approach to regulation and supervision, designed to ensure that regulated financial institutions apply specific standards of fairness to all financial customers." The regulations and new PPR's support government's objectives to ensure that all South Africans have access to the right insurance products and services.[99] The next paragraph discusses the reason why there has been a shift to fairness.

3.3 The Twin Peaks Model

Financial regulation changes constantly especially in South Africa. The reason for change being to strive for the utmost protection of consumers in all forms possible.[100]Without a doubt it is known that South Africa's insurance industry is highly regulated, various sources from the common law and statutes to rules and regulations in terms of these statutes all form part of the regulation of our insurance law[101] The Financial Sector Regulation Act,[102] also known as the "Twin Peaks" Act, has been implemented in order to strive for such change, change that would ultimately do more good than harm. The Twin Peaks system demands financial stability as well as the safety of financial institutions by providing two separate distinctions of authority.[103]

The Twin Peaks system which was introduced and implemented on the 1st of April 2018 authorises the South African Reserve Bank[104] a definite mandate in order to maintain financial stability, establishes authority known as "Prudential Authority", a prudential regulator which is responsible for regulating banks, insurers and other financial institutions, and acts as a market conduct regulator which is located independently of the SARB and which is currently known as the Financial Sector Conduct Authority.[105] The incorporation of prudential authority spirals several objectives set out in Section 33 of the FSRA, firstly it aims to promote and enhance the safety of market infrastructures and financial institutions that provide financial products and securities

[95] n 8 above.
[96] n 94 above.
[97] Treating Customers Fairly hereinafter "TCF".
[98] Financial Services Board hereinafter "FSB".
[99] n 94 above.
[100] Millard "The Impact of the Twin Peaks Model on the Insurance Industry" 2016 *PER / PELJ* 19.
[101] n 100 above 19.
[102] 9 of 2017 and Hereinafter referred to as the "FSRA".
[103] Ramracheya "The Twin Peaks model – a new approach" 2018 *Without Prejudice* 18-19.
[104] Hereinafter referred to as the "SARB".
[105] n 100 above 19 and whereas the Financial Sector Conduct Authority hereinafter referred to as the "FSCA".

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services, secondly, to provide protection for consumers against the risk that certain financial institutions might fail to meet their obligations and lastly, it aims to provide assistance in maintaining financial stability.[106] In order to achieve the above mentioned objectives, the prudential authority is entrusted with certain functions such as to play a supervisory role to financial institutions in terms of the relevant financial sector regulations, to work hand-in-hand and co-operate with other institutions such as the SARB, Financial Stability Oversight Committee,[107] FSCA, the National Credit Regulator[108] and the Financial Intelligence Centre,[109] to support sustainable competition and to review and adjust the scope of financial laws.[110] The passing of the FSCA and the implementation of prudential authority brought an ever exciting new transformation to financial regulation, although it has been widely criticised, there is no doubt that it enhances stability and trust in the financial model of South Africa.

3.3.1 How does the Prudential Authority compare with the old Financial Regulation approach?

Previously under the old regime, different financial departments were regulated by different institutions. For example, the SARB regulated any and all banks in South Africa, where any non-bank related institutions were regulated by the FSB.[111] In 2017 the FSRA was signed into law and established the Twin Peaks system for financial industry regulation.[112] In 2018 the Ministry of Finance was still accountable to the regulatory framework and guidelines which resulted in an ineffective financial regulatory approach which ultimately lead to the slow disintegration of the financial sector.[113]However, prudential authority provided for a more integrated supervisory approach in contrast to the industry-specific supervisory approach implemented by the old regime.[114] The prudential authority has created a more co-operative approach to financial supervision.[115] Insurance companies will be forced under the mandate of the prudential authority and they would ultimately have to apply for the conversion of their licenses.[116] The prudential authority will consider each application merits as well as the surrounding facts and circumstances, whereas the old regime placed a lot of importance of governance specifically.[117]

3.4 Impact on Consumer Credit

The FSB with the help of Treasury motivated stakeholders to take part in active engagement regarding the changes proposed in the new PPR's and regulations. Approximately 27 commentators gave commentary on the draft PPR's through the formal consultation process.[118] On

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[106] n 103 above.
[107] Hereinafter referred to as the "FSOC".
[108] Hereinafter referred to as the "NCR".
[109] Hereinafter referred to as the "FIC".
[110] n 103 above.
[111] n 103 above.
[112] n 103 above.
[113] Ferreira "Twin Peaks to assist low income earners" 2017 *Regulation and compliance* 10
[114] n 103 above.
[115] n 103 above.
[116] Godwin "Twin peaks : South Africa's financial sector regulatory framework" 2017 *SALJ* 665-702
[117] n 116 above 667.
[118] https://www.iol.co.za/personal-finance/more-protection-for-insurance-policyholders-12461141 (18-12-2017).

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the 1st of September 2017, the draft PPRs were published again and after rigorous feedback the FSB implemented a thorough review of all feedback received in the completion of the PPRs.[119]

The Retail Distribution Review[120] more specifically Phase 1 of the RDR will be given effect to through the new regulations and the PPR's.[121] Phase 1 of the RDR sets outs several improvements as to how certain financial products are sold such as, how to manage conflict of interest, ensuring the same keep of information which is outsourced to independent bodies as well as incorporating a system which avoids poor advice and intermediary practices.[122] The new PPR's also focus on the improvement to the prerequisites and requirements for binder agreements which essentially is in support of the RDR which limits the activity outsourced, the remuneration paid i.t.o a binder agreement and the parties towards such agreement.[123]

The amended PPR's avoid the concerns of consumer abuse in the credit insurance market by introducing well planned regulations, issueing limitations on mandatory credit life premiums as well as providing principles and requirements dealing with TCF in terms of consumer credit products.[124] Subsequently, policyholder protection is improved by indirectly forcing the insurer to disclose all relevant ombud information, co-operate with insurance ombuds and retain and handle any complaints it has received.[125] This all is ensured by the introduction of the Complaints Management Discussion and the Complaints Management Thematic Review which was published end year 2014, which aims specifically at claims management tasks, observing and analyzing the complaints, ensuring the upkeep of minimum standards[126] and submitting complaint reports to the regulator and ombuds.[127]

The new regulations close the regulatory gaps and changed the maximum amounts charged relating to certain legacy policies in the life insurance industry, especially those entered into before January 2009.[128] It can be considered a trend that over time there is a consistent reduction of the maximum penalty charged when a legacy policy has either lapsed, been transferred, surrendered or the premium paid has been decreased.[129] Sections 95, 109(e), 109(k), 109(l), 114(d) and 135 of the Financial Services Laws General Amendment Act[130] repealed the definitions of "independent intermediary", "representative" and "services as intermediary".[131] These definitions are now

[119] n 118 above.
[120] Hereinafter referred to as the "RDR".
[121] n 118 above.
[122] n 118 above.
[123] n 118 above.
[124] Technical Report on the Consumer Credit Market in South Africa, published on July 3, 2014.
[125] n 118 above.
[126] In alignment with international standards in terms of the International Association of Insurance Supervisor's Insurance Core Principles.
[127] n 118 above.
[128] n 118 above.
[129] n 118 above.
[130] n 80 above.
[131] n 80 above. See also Reinecke, Van Niekerk and *Nienaber South African Insurance Law* (2013) 520; "Independent intermediaries are middlemen who are not employed by or associated with a particular insurer or group of insurers. Representatives are dependant intermediaries who are so employed or associated".

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provided for in the regulations. The regulations and new PPR's took effect from the 1st of January 2018 with transitional provisions provided for certain sections.

3.4.1 Rules Summary

In order to contextualize the discussion around the PPRs, the following summary is provided for ease of reference:

Rule	Summary
Rules 1.1- 1.4 and 1.10 (Requirement for the fair treatment of policyholders)	These rules relate to treating customers fairly and most insurers should have a TFC policy in place.
Rule 2 (Product design)	This rule sets out the requirements regarding product design that insurers have to comply with to ensure that they follow the provisions set out in the PPR's. Need products to be "fit for purpose" in the relevant target market. This Rules can be linked closely with TCF.
Rule 3 (Credit life and consumer credit insurance)	This rule relates to mandatory credit life insurance. This rule is consistent with the Credit Life Regulations that came into effect on 9 August 2017. The Credit Life Regulations only affect credit agreements entered into on or after the commencement date.
Rule 5 (Negative option selection of policy terms or conditions)	This rule sets out that insurers would adhere to good business practice by ensuring that consumers know exactly what they are purchasing. As can been noted, TCF plays a vital role here once again.
Rules 6.1 and 6.5 (Determining premiums and excesses)	These rules relate to the determining of premiums charged to policyholders which need to be reasonable. It includes the requirement that insurers may not charge any kind of (policy) fee or charge over and above the premium.
Rules 7.1 (a) to (e) and 7.2(Void provisions)	This rule relates to void provisions, as an insurance business, you have already had to comply with void provisions under the PPRs of 2010. It includes banning the use of polygraphs

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	to repudiate claims under both long-term and short-term policies.
Rule 8 (Waiver of rights)	This rule sets out the waiver of rights by consumers. This principle relates to good business practice which should already be dealt with by insurers.
Rule 9 (Signing of blank or uncompleted forms)	This rule relates to the signing of blank or uncompleted forms.
Rules 12(1) & 12(2)	This rule relates to arrangements with intermediaries and other persons. Insurers must have an intermediary agreement with an intermediary. However, this does not prohibit an insurer from appointing an agent to facilitate the process of entering into such an agreement. The insurer is further required to ensure that they only enter into such an agreement with an intermediary who has the requisite product knowledge when offering a product of the insurer and the insurer must also provide the intermediary with a copy of the agreement. However, in practice, insurers already do due diligence on their intermediaries prior to commencing any commercial relationship.
Rule 15 (Periods of grace for Short-term Insurers)	This rule sets out the grace period for payment of premiums, which remains unchanged from the existing requirement. Short-term insurers have already been complying with this rule.

[132]

[132]https://www.fanews.co.za/article/compliance-regulatory/2/general/1082/do-you-know-about-the-new-policyholder-protection-rules/24097 (29-03-2018). Brief notes explaining the PPRs introduced in December 2017, formulated by Christine Rodrigues, partner at Hogal Lovells. See also https://www.mjdbrokers.com/wp-content/uploads/2018/06/KEY_CHANGES_TO_THE_POLICYHOLDER_PROTECTION_RULES_EFFECTIVE_FROM_1_JANUARY_2.pdf (02-06-2018).

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For the purpose of the above summary Rule 3 regarding Credit life and Consumer Credit Insurance states the following:

> "3.1 Mandatory credit life insurance
>
> 3.1.1 An registered insurer must not provide a mandatory credit life insurance policy to a policyholder, unless that policy and the costs associated with that policy comply with any relevant credit life insurance regulations made by the Minister of Trade and Industry under section 171 of the National Credit Act.
>
> 3.1.2 Rule 3.1.1 only applies to new policies.
>
> 3.2 Substitution of consumer credit insurance policy
>
> 3.2.1 An insurer must, where a policyholder or member of a group scheme informs that insurer, or the insurer otherwise should reasonably be aware, that the policyholder or member of a group scheme wishes to, or has, exercised the right under subsection 106(4)(a) of the National Credit Act to substitute any other consumer credit insurance with a policy issued by the insurer, assist the policyholder or member of a group scheme to, in relation to the substituted policy, to comply with
>
> (a) with any demands of a credit provider under section 106(6) of the National Credit Act; or
>
> (b) in respect of a registered insurer providing credit life insurance, with regulation 7 of the credit life insurance regulations made under the National Credit Act.
>
> 3.2.2 An insurer must, where an insurer is aware that a policyholder or member of a group scheme has substituted any other consumer credit insurance with a policy issued by that insurer, in writing and within a reasonable time of being requested to do so by the credit provider confirm to the credit provider that the policy is in force and that the credit provider is recorded as the beneficiary, cessionary or loss payee on the policy."[133]

3.4.2 Market Conduct

Market conduct is another step taken towards better protection of consumers. Essentially it refers to how businesses operate and carry out their everyday tasks.[134] Market conduct refers to the products themselves, the price thereof and focuses largely on fair treatment of customers.[135] Therefore it could be implied that the relationship between policyholders and institutions are of primary concern.[136] The consequence of better regulation thanks to the Twin peak system and the new PPR's, is that of a more controlled and manageable framework. The Market Conduct Policy

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[133] n 93 above. See also *National Credit Regulator v Finbond Mutual Bank and* another 2016 JOL 36777 (NCT) . "That Section 106(1) of the NCA provides that a credit provider may require consumers to maintain credit life insurance during the term of their credit agreement. A credit provider must not offer or demand that the consumer purchase or maintain insurance that is unreasonable or at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement. The Act clearly refers to the conduct of a credit provider and not to the conduct of a provider of short-term insurance."

[134] n 100 above 19.

[135] n 100 above 19.

[136] n 100 above 19.

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Framework sets forth an indication as to how financial insitutions have to adapt in order to conform with the TCF principles.[137]The framework accompanies the right type of processes that should be in place in order to provide the best possible outcome.[138] It especially focuses on clear and understandable information given to policyholders, whether such information is given orally or written.[139] Therefore, the element of plain and understandable language plays a desirable role in the achievement of conveying information properly to policyholders.

3.4.3 Fair Treatment of Customers

The principle of TCF was introduced by the FSB back in 2011, this principle completely changed the relationship between institutions and their consumers.[140]Essentially the TCF notion provides that institutions must apply six outcomes to the entire process and that such outcomes must be considered in the relationship between institutions and consumers..[141] Gavin Smith, Head of Africa, deVere Acuma stated that "The implementation of TCF outcomes, which is a crucial element of market conduct, is incremental in any financial business and has been given extensive consideration in our business".[142] The six outcomes are as follows:

1. That the consumers themselves feel confident and believe that the institution they are dealing with truly upkeep the notion of TCF.
2. That all products and services offered to consumers are adapted to meet their specific needs.
3. That all consumers are provided with correct and sufficient information where applicable.
4. That all information or advice forwarded to customers are suitable advice.
5. That all products and services are of an acceptable standard and meet the expectations of the consumer.
6. That the processes that consumers must face to either change a product, change providers or submitting a complaint are not of unreasonable difficulty to attain.[143]

Although majority of these TCF principles are already accounted for by the FSB and other relevant legislation such as the general code of conduct, the TCF principles are considered to provide additional protection for customers.[144] "Consumers should make themselves familiar with the TCF outcomes and ensure they reap the benefits thereof" says Smith. It is in fact the sixth outcome that is directly relevant to claims handling. What is important to note is that complaints and claims cannot be completely separated from the other outcomes.[145]

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[137] https://www.masthead.co.za/newsletter/market-conduct-policy-framework-implementing-tcf-framework/ (28-04-2015).
[138] n 137 above.
[139] n 137 above.
[140] Smith "Financial service providers take the lead in TCF – compliance" 2017 *Money Marketing* 10.
[141] n 137 above.
[142] n 140 above.
[143] n 137 above.
[144] n 140 above 10.
[145] Millard, D Treating Customers Fairly for Short-term Insurers: An Intergrated Guide (2017), Juta, Cape Town (forthcoming).

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For instance, if a broker failed to inform a policyholder about the fact that his car should be fitted with a tracking device and the car is later stolen, the claims handler will have to know how to solve the issue.[146] An example is the Ombud determination in *Fliptrans CC v S & P Insurance Advisors (Pty) Ltd t/a McCrystal and Partners and E Solms*,[147] In this case the complainant's motorcycle was supposed to be fitted with a tracking device. The motorcycle was purchased and the insurance sold without the advisors ever having met the complainant.[148] A similar defence was brought against the complainant, stating that it was the complainant's duty to read the policy schedule.[149]

The determination in *Fliptrans* was also in favour of the complainant. In *Jacques du Toit v Barrington Insurance Brokers (Pty) Ltd and John Frayne,*[150] the Ombud also found that the respondents failed to inform the complainant of the clause in his short-term insurance policy that dealt with a tracking device. In this determination the complainant's insurance policy was also moved between insurers and it is apparent from the facts that the respondents did not advise the complainant of his obligations to fit a tracking device.[151] When faced with a similar situation, a claims handler will know that the problem originated when the policy was sold and this will give an indication as to the rights and duties of the parties.[152]

The TCF framework introduces a notion known as the product life cycle.[153] All financial products, including insurance, has stages, product and service design, promotion and marketing, advice, point of sale, information after point of sale and at last complaints and claims handling.[154] The best possible way of grasping the current legal framework pertaining to each stage of the cycle is to take every stage and to extract from all the sources of the law those rules that apply to a particular stage.[155] Credit is a grudge purchase by consumers, the "now" mentality of consumers in the 20th century is all consequence of strategic marketing and the definite imbalance between consumers and sellers.

3.4.4 Protection of intermediaries

The Financial Intermediaries Association[156] of South Africa has made their voice known in terms of the new Regulations and PPR's. These regulations will have a significant impact not only on the consumers but on the intermediaries and the industry as a whole. The extent of the regulatory change is evident by the cloud of protection now offered to consumers. The FIA is concerned due to the surpassing volume of the complex regulatory change and the effect that such volume might

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[146] n 145 above.
[147] Case number FAIS 09787/11-12/GP3.
[148] *Fliptrans CC v S & P Insurance Advisors (Pty) Ltd t/a McCrystal and Partners and E Solms* case number FAIS 09787/11-12/GP3.
[149] n 148 above.
[150] Case number FAIS 01129/13-14/GP 3.
[151] *Jacques du Toit v Barrington Insurance Brokers (Pty) Ltd and John Frayne* case number FAIS 1129/13-14/GP 3.
[152] n 151 above.
[153] n 145 above.
[154] n 145 above.
[155] n 145 above.
[156] Hereinafter referred to as the "FIA".

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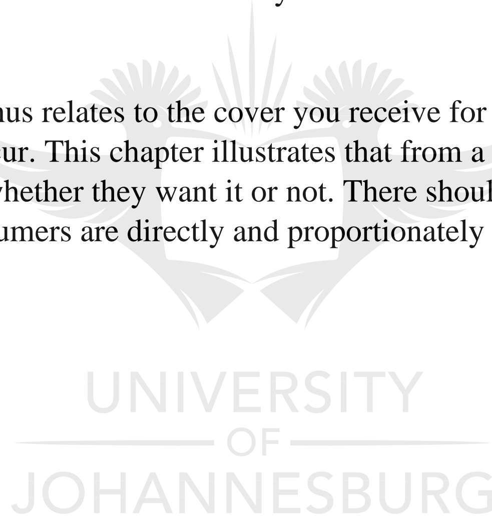
have for the long term sustainability of intermediary practices.[157] The Chief Executive Officer of the FIA, Lizelle van der Merve states: "Our members face a double-edged sword of rising business and compliance costs on the one side and income pressures on the other". The cost and income balance affect the value and practicality of the practices as well as the ability of such institutions to participate in an ever changing insurance economy.[158]

It is a great concern that the new regulations, although offer such extensive protection for consumers, cause institutions to increase the affordability of advice to accommodate the costs involved.[159] Not only will affordability of consumers be a prospective concern, but the loss of employment in the middle and lower earning brackets will be noticeable.[160] Small and Medium institutions might find the new regulations to be unsustainable and will therefore have to respond accordingly. When considering the bigger picture, the new regulations impact the important objectives of financial inclusion and transformation in the insurance industry. The new regulatory framework will make it more difficult for new entrants to enter the market, hinder transformation initiatives and restrict competition.[161] Can one justify the disproportion between the protection of consumers on the one hand and the unsustainability of insurers on the other?

3.5 Evaluation

Consumer credit insurance thus relates to the cover you receive for any unwanted situations or circumstances that might occur. This chapter illustrates that from a market conduct perspective consumers have protection whether they want it or not. There should be a balance imposed where the protection of consumers are directly and proportionately weighed against the rights of the insurers.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[157] Van der Merwe "Protecting financial intermediaries and consumers" 2017 *Money Marketing* 5.
[158] n 157 above 5.
[159] n 157 above 5.
[160] n 157 above 5.
[161] n 157 above 5.

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CHAPTER 4: A COMPARATIVE STUDY WITH THE UNITED KINGDOM

4.1 Background and History

As South Africa's legal system spawned partly from English Law, it would only be admirable to furnish a comparative aspect of the insurance industry between South Africa and the United Kingdom[162]. With a very similar background and legislature, the insurance industry in the UK focuses greatly on consumer protection. The UK's insurance market is considered to be the largest global model for insurance risks operating more than $91 billion in gross profit of written premiums.[163] The regulatory framework has very similar bodies and institutions as provided for in South Arica's insurance industry.

In the UK the Financial Services and Markets Act[164] as amended by the Financial Services and Markets Act order[165] provide the framework for the regulation of insurance and reinsurance activities. The regulation framework includes the Financial Conduct Authority Handbook as well as the Prudential Regulation Authority Rulebook provide strict guidance on governance, conduct and business requirements.[166] An Insurance Distribution Directive (IDD) has been published which deals with the authorization, general regulatory requirements as well as organizational and business requirements for insurance undertakings for the insurance industry, it is aimed at how insurance products are designed and sold within the European Union taking into account the various types of distributors.[167] It should be considered that Brexit might have an effect on the IDD, however such effect will most likely not be immediate and will depend on the transition period after the withdrawel of the UK from the European Union which is therefore still uncertain.[168] The UK stipulates requirements for contract of insurance such as the payment of a premium the consumer or policyholder, in return for the premiums payed the other party involved (insurer) undertakes to the payment of a sum of money upon the occurrence of an uncertain/or certain future event, such specific event must be one that is adverse to the interest of the policyholder.[169]

Furthermore the UK's rules and regulations provide for the institution of criminal proceedings. The Prudential Regulation Authority and the FCA has been given the power to institute criminal proceedings against a person or institution who do not obey the rules and regulations.[170] If found

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[162] Hereinafter referred to as the "UK".
[163]https://uk.practicallaw.thomsonreuters.com/0-501 2031?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1 (01-06-2018).
[164] 2000 (FSMA) as amended.
[165] 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO).
[166] n 163 above.
[167] n 163 above.
[168] https://www.bbc.com/news/uk-politics-32810887 (27-01-2020).
[169] *Prudential Insurance Co v IRC* [1904] 2 KB 658. See aslo Lord Moncrieff in *Scottish Amicable v Northern Assurance Company* 1883 11 R 287 defined insurance as "a contract by which the insurer undertakes in consideration of the payment of an estimated equivalent beforehand, to make up to the assured any loss he may sustain by the occurrence of an uncertain contingency".
[170] *Hall D'Ath v British Provident Association* [1932] 48 TLR 240

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guilty an insurer can be fined or sentenced to imprisonment under Section 23 of the FSMA.[171] The Consumer Rights Act[172] established more pivotal enforcement powers against any insurer who use policies which contain unfair terms or any insurer who condone the breach of consumer law.[173] Consumer law examples would be that a policyholder must have the ability to terminate an insurance contract and that a policyholder whom is victim of an unfair contract term must be accordingly compensated by the insurer.[174]

4.2 Legislation

In the UK the law provides the enhancement of protection for consumers under insurance policies. As in South Africa, the UK has no codification of their law and that all regulations and legislations spawn from various sources, such sources being:

- the Financial Services and Markets Act;[175]
- the Financial Conduct Authority;[176] (FCA)
- the Insurance Conduct of Business Sourcebook (ICOBS);[177]
- the Consumer Insurance (Disclosure and Representations) Act;[178]
- the Consumer Rights Act;[179] and
- the Insurance Act.[180]

4.3 Consumer protection

The protection of policyholders or consumers in South Africa focuses mainly on the TCF principles which are intertwined with the principle of good faith, however, the UK aims at enhancing protection of consumers by focusing on the duty to take reasonable care not to make any misrepresentations when applying for any type of insurance agreement.[181] It should be clarified that the Insurances Act[182] incorporates the duty of fair representation which relates to non-consumer contracts, whereas the Consumer Insurance (Disclosures and Representations) Act[183] refers directly to consumer contracts. It is observed that the UK's rules and regulations

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[171] n 163 above.
[172] 2015.
[173] n 163 above.
[174] n 163 above.
[175] n 163 above.
[176] Hereinafter referred to as the "FCA".
[177] Hereinafter referred to as the "ICOBS".
[178] 2012.
[179] n 163 above.
[180] 2015.
[181] n 163 above. See also the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 which states "An insured is obliged to provide information to his insurer prior to the contract of insurance being entered into or any variation being made to the insurance contract" there is a similar notion provided for in South African insurance law.
[182] 2015.
[183] n 178 above.

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places just as must weight on the shoulders of the insurer. The insurer must specifically ask for information from the policyholder in such a manner which is fair, clear and relevant instead on relying on material facts.[184] In South Africa just as in the UK the rules and regulations provide for the protection of consumers at the justifiable detriment of the insurer.[185] What is implied is that the rights of the insurer is reduced in certain instances such as the termination of non-disclosures which inevitably provides for the greater protection of the consumer or policyholder. The ultimate conclusion is that consumer protection in South Africa is a more delicate process than what it might be in the UK, for instance we have a more diverse population and therefore, more consumers who are in need of protection which are unable to protect themselves. The Uk offers a more diverse and wider form of protection for consumers than the regulatory framework provided for in South Africa.

[184] n 163 above.
[185] n 163 above.

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CHAPTER 5: CONCLUSION

This study sought to assess whether the Policyholder Protection Rules (Short-Term Insurance), 2018 are clear, serve a purpose and aim to offer protection for those consumers who take up credit insurance.

To conclude, the writer submits that with all the regulations and legislative means provided for consumers, it is clear that from a market conduct perspective that consumers are guaranteed protection from such regulations whether they intended to have such protection or not. It should be noted that in a third world economy, there is a greater need for the regulation of the relationship between consumers and financial institutions in order to ensure that regulations address the asymmetry of information. Consumers of credit are vulnerable and of one adds to that another grudge purchase that is insurance, there is even greater potential for exploitation.

The protection offered by the new PPR's must be distinguished from the protection offered by various other statutes, for example, when a consumer enters into a credit agreement that the goods/services purchased by the consumer are protected by the CPA, the initial credit agreement entered into by the consumer and the credit institution is protected by the NCA and the credit insurance purchased by the consumer is regulated by the PPR's. It is clear that the PPR's aim to improve market conduct in the sector, ensure fair treatment of customers, appropriate incentives and remuneration and to address conduct of business risk and any abuse identified through observation it is submitted that there is consequently not an overlap between the NCA, CPA and the PPRs. This is important as one transaction should be distinguished from the other in order to avoid confusion and uncertainty.

The extent of the protection provided is such that it has the capacity to mitigate against the uncertainty related to market conduct and the neglected protection of consumers who take up consumer credit. It is certain that the new PPR's have a clear purpose of providing better protection for consumers who take up consumer credit. We are cautiously optimistic that these rules will have the effect of outlawing the worst of the abuses that we see in the credit life industry.

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