

***Insurable interest – “spouse” – divorce - whether cover in respect of a “spouse” terminates, on the basis of absence of insurable interest, when that person no longer meets the requirements of a spouse as defined in the contract.***

## **Background**

The complainant was a participant/member of a group life scheme in terms of which he applied for and was granted cover on his own life, that of his spouse and his children.

The definition of “spouse” in terms of the contract read:

”spouse means the legal husband/wife of the member, or such other person residing with the member who would normally be regarded by the community as the husband/wife of the member, provided the spouse is the person indicated in the prescribed application form.”

The complainant and his spouse were divorced after the commencement of the contract. The custody of their children was awarded to the member’s spouse and he duly paid maintenance for them. When she died, he felt obliged to cover the cost of her funeral.

The insurer declined a death claim in respect of her death on the grounds that cover, in respect of the spouse, ceased on divorce. According to the insurer the divorce terminated any insurable interest that had existed between the member and his former spouse. In the absence of an insurable interest, so it was contended, the insurer was no longer obligated to pay the promised benefits.

## **Discussion**

Insurable interest is a wide subject. It is dealt with in more detail on our website under “Papers and Presentations”. There is a difference, as far as insurable interest is concerned, between indemnity and non-indemnity insurance and the times when such an interest needs to exist.

The purpose of indemnity insurance is to compensate the insured for loss or damage. It follows that if at the time the claim is instituted the insured has not suffered any loss or damage, the justification for compensation is lacking. This would be the case when the owner of a motor vehicle insures that vehicle but subsequently sells it and no longer has an interest in the vehicle at the time it is damaged in an accident.

Life insurance is non-indemnity insurance.

The requirement of an insurable interest in respect of life insurance has its origin in the English law where it became a legal requirement in order to avoid wagering on lives. It is generally accepted that while this interest is a requirement for the validity of the contract at its conclusion, it does not have to exist at the time when the event insured against occurs, unless of course the contract so provides, which in this instance it did not do.

On the strength of these considerations the argument of the insurer could not be supported. The member had assumed liability for the funeral costs of his deceased ex-spouse which in any event confirmed the existence of an insurable interest at the time of her death.

### **Result**

The insurer accepted our decision and paid the claim.

**EdB**  
**November 2006**