

STATES OF JERSEY



VERITA INVESTIGATION: EXTENSION TO COVER EXCLUSION OF CONSULTANT OBSTETRICIAN AND GYNAECOLOGIST (P.131/2009) – COMMENTS

Presented to the States on 8th September 2009
by the Minister for Health and Social Services

STATES GREFFE

COMMENTS

The Deputy's proposition relates to one employee of Health and Social Services (HSS) and the way in which his situation has been managed internally. It does not relate in any way to the events leading to the tragic death of Mrs. Rourke. The Deputy's proposition, if agreed, would significantly alter the focus of the Verita investigation. The central purpose of the Verita investigation is to enquire into the matters that led to Mrs. Rourke's death by examining her care, treatment and management in order to learn from the past and to allow any necessary or desirable actions to be implemented to ensure that we are best placed to prevent a recurrence of the tragedy. It is not a disciplinary investigation and it is not designed to look into the internal management of the cases of individual employees. The Deputy's proposition would introduce a Human Resources element into the investigation. This could divert attention from the much more important issue of patient safety. It would also delay the final report, which would be unfair to Mrs. Rourke's family. HSS is keen to press ahead with its internal processes and procedures, but at this stage it is simply not in a position to do so. A delay in the Verita investigation will simply add to the delay in bringing matters to a conclusion, and will inevitably therefore add to cost. The proposition would also potentially delay the re-opening of the Inquest. I would therefore ask, in the strongest possible terms, that P.131/2009 be rejected.

The Verita investigation has been launched to enquire into the circumstances surrounding the care, treatment and management of Mrs. Rourke who tragically died in hospital. There are legal and ethical reasons why this was necessary, but they both focus on the fact that Mrs. Rourke died whilst in the care of the General Hospital, which is a public authority.

As a matter of Law, under Article 2 of the European Convention on Human Rights, the state is committed to not taking the lives of its citizens, and developed case law on this Article extends the obligation to enquiring into the reasons for the death of any citizen in the care of the state, with the implied obligation of taking reasonable steps to ensure that any mistakes or actions on the part of the state or its agents or employees which were a material cause of the death are not repeated.

As a matter of ethics, the Council of Ministers wants to achieve the same objectives because that is the right thing to do. The Island's government must, and does, recognise the need to take all the steps which should reasonably be taken to ensure the safety of those within its care.

The Verita investigation is thus contained within the parameters of this obligation – to enquire into the circumstances that led to Mrs. Rourke's death with a view to ensuring that the Hospital processes and procedures go as far as they can to prevent the recurrence of such a tragedy in the future. It is an investigation into what happened to Mrs. Rourke, not into what has subsequently happened to the employees involved in her care.

An investigation brought as part of a disciplinary process affecting an employee as a result of the death is obviously quite different – it is different in terms of the period under review and as to the substance of what is considered. An investigation brought specifically to consider how HSS has managed the position of this (or any other) employee, including the exclusion, is also different – and a possibility that the States Employment Board (SEB) are looking into.

It would be wrong to muddle up different types of investigation for these reasons –

- (i) To include the internal management of an employee's situation within the ambit of a review into the circumstances of the death of a patient belittles the tragedy that has occurred. Verita's focus is to look at the process surrounding the care and safety of those admitted to hospital.
- (ii) If the terms of reference are varied to include enquiry into the management of the exclusion process, this is likely to cause delay in the completion of the existing Verita investigation, which would be unfair to the family of Mrs. Rourke, who are entitled to the emotional closure which one hopes that completion will bring; and in addition, delay carries the risk that, in the interim, any recommendations which Verita may make and would be accepted regarding patient safety, will not be put into effect as quickly as they should.
- (iii) The relationship between the state as employer and the employee is such that the employee is entitled to confidentiality in the carrying-out of the exclusion and the disciplinary process. It may be the case that the management of the employee's exclusion should be considered and reviewed by the SEB acting as a prudent employer at an appropriate time. It is not the role of Verita to carry out that Human Resources review.

Mrs. Rourke's tragic death raises many issues that need robust investigation. Of paramount importance is patient safety, and it is the Verita investigation that is examining this issue. The course of this investigation should not be diverted by the general issue of public employee suspensions, or in this case the specific exclusion of a Hospital Consultant. The exclusion of the Hospital Consultant is a private and confidential issue between employee and employer and not a matter for public debate. This does not mean that the exclusion process should not be subject to review, and I understand that the States Employment Board are considering commissioning an independent review at an appropriate time to assure itself that the process is carried out correctly and the ongoing review process is done in line with due process.