

2018.11.20

15 Deputy R.E. Huelin of St. Peter of the Minister for Health and Social Services regarding the States' insurance policy in respect of clinicians and healthcare staff working in the hospital: [OQ.207/2018]

Will the Minister state the duration of the States insurance policy relating to clinicians and healthcare staff working in the hospital, the cap on damages payable under the policy and the cap on the amount of claims that may be made under the policy if there are any?

The Deputy of St. Ouen (The Minister for Health and Social Services):

This question relates to the generic insurance contract which is funded by the States of Jersey and does not relate to the individual arrangements that consultants make with their own insurers. So that insurance policy is for a period of 12 months and renewed annually and, as with all contracts of insurance, the amount of damages and costs is limited because there are no medical negligence insurance contracts that provide unlimited cover. So in this case the States of Jersey policy has a limit of £20 million per claim and it is subject to an overall maximum of £30 million per annum.

3.15.1 The Deputy of St. Peter:

In the world of clinical negligence there is a major increase in claims being made around the U.K. and the world and we will be governed, it is fair to assume, by the premiums that are set by insurance companies outside of the U.K. May I ask then: should any of these claims exceed those caps, what provision do the States have to make up any shortfall?

The Deputy of St. Ouen:

I am aware of the general concerns around increasing costs of premiums. The States of Jersey employs advisers to assist on the appropriate levels of insurance. It will enter into discussions and negotiations each year to fix a limit of indemnity which it will consider is appropriate in the circumstances. The fact is that the area is being continuously reviewed to minimise risk.

3.15.2 Deputy G.P. Southern:

Would the Minister state for Members how much this insurance policy costs and how that compares with the insurance policy support that he pays towards consultants?

The Deputy of St. Ouen:

As I understand it, this is a single insurance policy covering all States employees. I do not know the detail. I do not know whether the premium is broken down between hospital staff or health staff or staff employed within other departments. It is a single insurance policy. There is a single premium payable. I think it would be very difficult, if not impossible, to carry out the exercise that the Deputy suggests.

3.15.3 Deputy G.P. Southern:

Where is the difficulty? Because there must be somewhere in the accounts a sum which says: "Insurance policy for this function" and there must be a statement somewhere at some time saying: "And we also spend this much on consultants' protection." Why is that so difficult to find out? Will the Minister attempt to come back with some decent figures?

The Deputy of St. Ouen:

In the context of an oral question, it is very difficult to answer questions about the States accounts. I am sure in the States accounts there is a figure given for the insurance premium that the States pay under this policy of insurance and, as the Deputy requests, I will request what that figure is and I will circulate Members with that figure for the last insurance period. As to comparison, I am totally unclear as to what the Deputy is asking. I do not believe you can compare a global insurance policy covering thousands of employees with individual insurance policies to which we are not party because they are taken out by our consultants. So I cannot see how I can undertake any sort of work in that vein.

Deputy G.P. Southern:

If I may seek clarification because the ...

The Deputy Bailiff:

I think you have already had a supplementary to your question, Deputy. At the moment I have the Deputy of St. John, Deputy Higgins, Deputy Morel, Senator Ferguson and then the final supplementary. I really have to keep a very tight rein on the number of questions that we allow in.

Deputy G.P. Southern:

Please, one of you, ask the germane central question.

3.15.4 Deputy T. Pointon of St. John:

I ask the Minister: what risk assessment has been undertaken to ensure that Jersey is prepared for an increase in clinical negligence claims, increased damages payments and increased professional indemnity insurance premiums?

The Deputy of St. Ouen:

It is interesting that the Deputy posits a level of increasing claims. I am not sure there is any evidence to back up a scenario that claims are continually increasing. Claims will always happen; we must accept that. The team that negotiate and take care of our insurance arrangements will always be assessing risks and will be taking appropriate advice, I can say that.

3.15.5 Deputy M.R. Higgins:

Before I ask the question, I will just state I am going to be asking about the family X siblings' case and damages. I am not going to be asking any questions about the merits or demerits of that case. The question I want to ask is: if the Minister has said that there is a maximum payment of £30 million, or whatever the figure was he gave a short while ago, how does he reconcile that with the £200 million-plus claim that was made in that particular case? How do you reconcile the 2? It is your department that is going to be faced with that claim.

The Deputy Bailiff:

I think that is a question that can be answered. I do not think it can impinge upon anything currently before the courts, Minister, so if you are in a position to answer that, it is simply a comparison.

The Deputy of St. Ouen:

It seems to me a question that goes way beyond the ambit of the original question that was asked, but the answer to the original question was that there is an annual overall maximum claim limit of £30 million per annum. That would suggest that to the extent that claims exceed that figure there is no insurance cover. That would be my understanding at the moment.

3.15.6 Deputy M.R. Higgins:

Does that mean that the States is going to pick up the bill for any claims in excess of the £30 million?

The Deputy Bailiff:

I think that may well stray into an area which might be difficult. I do not allow that question.

3.15.7 Deputy K.F. Morel:

In light of the potential for increased claims in the coming years, does the Minister know whether there is any fetter on the right of the insurer to increase premiums in years after claims are made, so whether we have a way of limiting the increase on the premiums that the insurer asks us to pay?

The Deputy of St. Ouen:

These are commercial arrangements which are subject to negotiation. I do not believe we can enforce any limitations on a commercial contract. We can shop around perhaps to see what other insurers may provide, but there is, of course, something within our power, which is to ensure that we have appropriate legislation that might fairly limit awards of damages. I refer again to the question of the Damages law in draft that will be considered by this Assembly shortly because there is a concern around how future losses are quantified. We have not kept up in Jersey, it would seem, with statutory provision in other jurisdictions, which does limit the ambit of awards for future care of persons who have suffered medical negligence incidents. That damages law, if passed, would allow us to come into line with many other jurisdictions while still providing a fair system of compensation to claimants. That would, no doubt, give comfort to insurance companies who are looking at the Jersey market and considering the quantum of claims that might arise.

[11:15]

3.15.8 Senator S.C. Ferguson:

Does the Minister not realise that there is very much a public interest aspect to this because the prospect of too high premiums will add to the recruitment difficulties of medical staff and general practitioners in the Island and will leave a great big hole in the amount of medical provision that we provide for Islanders? Does the Minister not realise the urgency of this?

The Deputy of St. Ouen:

I have not heard at all that consultants are prevented from coming to Jersey because of the cost of their premiums. I have no reason at the moment to believe that their premiums when working in Jersey are any different to premiums they paid previously when working in the U.K. or elsewhere. Again, this is a question of commercial confidentiality towards those consultants when we are not party to their insurance arrangements.

3.15.9 Senator S.C. Ferguson:

I am sorry, will the Minister pay attention to this, please? I regret to mention but earlier in this session the Minister said he thought there were only one or 2 bullying cases prior to the H.R. (human resources) report being issued. Will he not understand that I am not asking this question from a point of ignorance; I am asking it from a point of view of informed opinion from within the profession.

The Deputy Bailiff:

Other than to say yes or no, I am not sure that can provide information; an answer to that question, Senator. What information are you asking for?

Senator S.C. Ferguson:

Will the Minister give the assurance that he will consider this matter with a great deal more urgency than he appears to be doing at the moment?

The Deputy of St. Ouen:

I will give urgent consideration to the matter when I can understand the Senator's concerns. She obviously has some information; is it that a consultant feels that he or she has paid too much for an insurance premium and that the States has not reimbursed sufficient amount? All those questions can be looked at and the Senator, as chair of P.A.C. (Public Accounts Committee), will know that she has her methods by which she can request information to be treated confidentially for the purposes of her P.A.C. work. But to seek a disclosure of amounts paid under a contract to which we are not party, which might identify individuals, is I believe entirely inappropriate.

3.15.10 The Deputy of St. Peter:

I think Deputy Higgins's question covered my original supplementary.

The Deputy Bailiff:

You do not have to ask one.

The Deputy of St. Peter:

That is, how would the shortfall be covered over and above the cap of £20 million for each individual case or £30 million overall? It is clear that is going to have to come out of the rainy-day fund or other reserves.

The Deputy Bailiff:

This has to be a final supplementary question, not a statement about what someone else has said earlier.

The Deputy of St. Peter:

Can you please clarify that and also can you please give an assurance to myself, the Assembly and the Island in general, that it is known that increased premiums are a real situation and this will be at the front of your agenda going forward to make sure we cover that situation to the benefit of the Island, because it will otherwise undermine our health service potentially.

The Deputy Bailiff:

I thought, Deputy, that was talking about what happens if there is a shortfall between the insured sum and that was a question that I specifically ruled out of order when Deputy Higgins asked it.

The Deputy of St. Peter:

Then could I ask the Minister just to give clarification that he will have this at the front of the agenda and do the necessary research and due diligence that insurance premiums are flying at the moment and that he will do whatever he can to ensure this does not potentially undermine the health service for our Island?

The Deputy of St. Ouen:

I give that assurance.