



Standing Committee on Justice and Community Safety

Inquiry into Dangerous Driving **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by Mr Peter Cain MLA on 7 December 2022: Ms Nicola Clark took on notice the following question(s):

Reference: Hansard [uncorrected] proof transcript 7 December 2022, Page 10-11

In relation to:

THE CHAIR: Thank you. So supplementary on that review process I guess. What information do you actually provide to a claimant about their review rights?

Ms Clark: So, it is such for the duty on the insurer to provide information about the DEVD rights, so in sending out a decision about say, for example, the number of treatment and care physiotherapy sessions, that they actually outline in that information that they, you know, if they are not satisfied with the decision they can either discuss it with their claim consultants in the first instance, the claims consultant may actually consider that new information and does not require any steps to do an internal review, or they explain how they can actually apply for an internal review and it also—they then provide that information onto the internal review decision about where they can go after that if they say they still have an issue.

THE CHAIR: Which is to the ACAT I assume.

Ms Clark: Yes.

THE CHAIR: So what about the nominal defendant, what information that—

Ms Clarke: They have the same—so they will advise people about, you know, if they have an opportunity to have a, you know.

THE CHAIR: Yes, so is that in the form of an internal review notice or ?

Ms Clark: It will be in the form of in the letter or information in a separate attachment.

THE CHAIR: Look, I have been provided with a copy of a determination of income replacement benefit entitlement and it said if you simply said if you are not happy with this, just give me a call or send us an email.

Ms Clark: As I flagged, we have actually—we do encourage our insurers to invite people to raise concerns with them in the first instance so that it can be discussed with the individual, because there may actually be something about how the information was communicated or there may be something about how that person was in—

THE CHAIR: But if the person has reached a point where they have said, “Well I have spoken to you enough, so what is the point of speaking with you again?” Perhaps more is needed to tell that individual that they can have a formal internal review and then appeal right to the ACAT, rather than just talk to us again.

If someone has got sick of talking, say it is a nominal defendant again, that is not really informing them of their statutory review rights.

Ms Clark: We will—I certainly can take that back and have a conversation with a nominal defendant to exactly what was provided to that individual, and whether or not there have been an attachment or some have you—

THE CHAIR: Well it looked like a standard—it looked like a standard response, as well. Just call us back if you are not happy. It is not really a proper—informing of statutory review rights.

Ms Clark: As I said, we need to have a look at the actual correspondence about that—

THE CHAIR: Is that something you can take on notice, to sort of confirm the approach with this committee?

Ms Clark: We can certainly take it on notice and then discuss with our colleagues.

THE CHAIR: For example, an example of the formal notice that was sent to the claimant decisions.

Ms Clark: We can take that on notice—

Motor Accident Injuries Commission: The answer to the Member’s question is as follows:—

The general framework for informing an individual of their statutory review rights for administrative review is provided for by section 8 of the *ACT Civil and Administrative Tribunal Regulation 2009*. This regulation has no application to a decision made by an insurer under the *Motor Accident Injuries Act 2019*, as it is not an administrative (ie. government) decision. The MAI Commission has outlined its own requirements for giving information on the review process through the *Motor Accident Injuries (Internal Review) Guidelines 2022*.

The MAI Commission can advise the following from the Office of the Nominal Defendant in relation to recent correspondence sent by the Office referred to by Mr Peter Cain MLA, during a hearing of the inquiry into dangerous driving on 7 December 2022.

The Office understands that the Chair noted that the letter did not include a reference that the decision made was an internally reviewable decision. The Office refers the Committee to the Motor Accident Injuries (Internal Review) Guidelines’ introduction, which provides that an insurer has a duty to give an applicant written reasons for all decisions that have a material effect on an entitlement to defined benefits and to tell an applicant about the right to review of an insurer’s decision.

An insurer can adopt their own procedure for telling an applicant about review pathways, ie., there is no requirement to include a formal notice. The Office acknowledges a letter was sent in November that did not include a reference that the decision made was an internally reviewable decision. The Office can advise that a previous letter regarding an earlier decision on income replacement in August did include this information, and that it has been included in other correspondence provided by the Office to the applicant. The Office will consider incorporating a note referring to their earlier advice regarding decisions that are an internally reviewable decision under Schedule 1, part 1.1 of the Motor Accident Injuries Act.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature: 

Date: 15 December 2022

By the Motor Accident Injuries Commissioner, Ms Nicola Clark