

R E S P O N S E

by

IAN MACKAY QC

to

**THE SCOTTISH CIVIL COURTS
REVIEW**

INTRODUCTION

I am a Queen's Counsel practising in the Court of Session. My primary area of interest is reparation. My response is in a personal capacity. A substantial proportion of my practice is concerned with personal injuries litigation and my response is primarily concerned with issues concerning personal injuries claims resolution. I have submitted a separate response putting forward a process for the resolution of personal injuries claims in both the Sheriff Court and the Outer House of the Court of Session.

I note (paragraph 1.9) that the primary purpose of the Review is: "to improve access to justice for the people of Scotland". I also note that (paragraph 1.11) the principles underpinning any proposals for reform should be proportionality and value for money together with the principles listed in paragraph 1.12.

Response to the questions in the Consultation Paper

Chapter 1:

1. Yes. From the point of view of personal injury (hereafter “PI”) claims, encouragement to early resolution of disputes without resort to the Court is something that occurs already without the imposition of rules. Except in special circumstances such as approaching limitation deadlines, attempts to resolve PI claims prior to litigation are the norm. It is usually only when such attempts breakdown or that the limitation period is about to expire that a claimant resorts to litigation. However it is particularly important that claimants are in receipt of proper legal advice before resolving PI claims. I am aware of wholly unrealistic offers being made to claimants before they have sought legal advice regarding their claims. For example in Feb. 2008 I represented a quadriplegic claimant who was offered £400,000 before obtaining legal advice. I valued his claim as being worth in excess of £5,000,000. A key feature of any system encouraging early settlement must be that the claimant is fully aware of the possible value of his/her claim, otherwise any purported settlement is void.
2. I agree that some of the principals and assumptions discussed in paragraph 1.11 to 1.4 are matters which could be taken into account in the development of the Review’s recommendations but the overriding principle that should be the basis of all recommendations is “to improve access to civil justice for the people of Scotland”. Any proposal that would tend to reduce or diminish access to civil justice for the people of Scotland should be given no weight whatsoever.

With regard to “ensuring that cases are dealt with in ways which are proportionate to the value, importance and complexity of the issues raised,” a PI action by a claimant of modest means seeking payment of say, £10,000 may be very much more important to that individual (one of the “people of Scotland”) than an action of debt in which a large company claims £1,000,000. To take this further, if 100 of the “people of Scotland” claimed £10,000 each for industrial deafness, this might be considered much more important to “the people of Scotland” than a multi-million action of debt by a large company. Thus in paragraph 1.12(iv) proportionality is not as simple as

suggesting that disputes in which the monetary value of a claim is below a certain amount should all be treated under the same rules, in the same forum and that the expense involved should be approximately the same irrespective of the nature of the civil dispute. In my example of a person seeking £10,000 for industrial deafness, the difficulty of litigating the claim to vindicate that person's right to damages may be much greater than the difficulty of litigating a simple action of debt by a large company for a hundred times that sum. I would suggest that in the former example any extra cost in vindicating the injured persons' right is much more important (proportionately) to "the people of Scotland" even though the sum in dispute (what is at stake) is only a small fraction of the sum in the latter example and that "the people of Scotland" are entitled to expect that significant resources and the highest standards of judicial decision making and legal representation are devoted the resolution of PI disputes.

I do not consider that the "primary" principle of "improving access to (*civil*) justice for the people of Scotland" (paragraph 1.9) should be supplemented by other factors otherwise there is a risk that the Reviews' recommendations will be *ultra vires*.

3. There are no additional matters about which I have concerns.

Chapter 2:

1. In my view a public legal education has a major contribution to make in improving access to justice for the people of Scotland. I agree wholeheartedly with the views set out by the Ministry of Justice in the July 2007 Report and by SCOLAG in their publication *3 Steps to Increase Access to Justice*. For most adolescents in Scotland law is seen as being synonymous with and confined to the criminal law. I would suggest that every school leaver should be aware of the rights and obligations conferred on citizens by the civil law. It is only a tiny minority of school leavers who are aware that every time they purchase something from Tesco they are a party to a contract. The first realisation of this often comes with the purchase of faulty goods. It is unusual to find much understanding that the civil law protects their rights and enables them to enforce their rights. It is my view that such education would confer

great benefits on society as a whole. Access to civil justice for the people of Scotland is restricted if they do not have a basic knowledge of their rights under the civil law. It may not be within the remit of this review, but I would suggest that some element of education about the Scottish legal system and the substantive civil law should be mandatory in all Scottish schools. If it is accepted that knowledge of the Scottish legal system would improve access to justice for the citizens of Scotland, I would suggest that the restrictions on televising Court proceedings should be relaxed. It should be made simple for civil court proceedings to be televised if the parties give their consent. If the parties give consent having been appropriately advised as to the possible consequences, I see no reason why Court authorities should interfere with the parties' wishes. I consider that the regular broadcasting of a large variety of types of civil proceedings would play an invaluable role in the education of the citizens of Scotland regarding their legal rights and obligations. It is an astonishing paradox that many of the people of Scotland are more familiar with the rights and obligations of US citizens in consequence of televised US court proceedings, than they are with the rights and duties of Scots citizens.

2. I have no direct knowledge of the legal advice scheme so I am unable to comment on this question, except to refer to my observations in answer 1 in Chapter 1.
3. In some areas of law it is feasible to design Court procedures with a view to enabling litigants to take part in the process without legal representation. This already occurs with regard to the small claims procedure. There is no reason why an arbitrary financial limit should make a simple action of debt less amenable to a litigant taking part in the process. In other words, a simple action of debt could proceed in the same way as a small claim whether the debt was £100, £1000 or £10,000. PI disputes are in an entirely different category. Both common law and statutory liability are now extremely complex. The calculation of damages can also be extremely complex. It would be very difficult for an unqualified person to do themselves justice in any PI claim unless they were represented or assisted by someone with a good working knowledge of the law in relation to both liability and damages. Having regard to these difficulties, I cannot see how it could be either desirable or feasible to enable or

compel PI litigants (or at least claimants) to take part in the process without legal representation. Once again I refer to my answer 1 in Chapter 1.

4. I have no comments to make.
5. I have no comments to make.
6. The phrase “low value cases” is used repeatedly in the consultation paper. As I have already stated the “value” of a case must involve consideration of the *value* to the *individual* or *individuals* concerned. A narrow minded concentration on “low value” has little connection with qualitative justice. All citizens of Scotland should be entitled to the highest standards of judicial decision making and representation when they become involved what might be a once in a lifetime civil dispute, whether a third party regards their claim as “low value” or not.

Paragraph 2.19 refers to the Irish PIAB and claims about reductions in expense and time taken to resolve PI claims.

I understand that members of the Review will be visiting Ireland, so they will become aware of the context in which the PIAB was established and the substantial problems that have arisen since its’ establishment. The Review will also become aware that the PIAB refuses to accept that there have been any problems whatsoever since it was set up. Irish newspaper reports paint an entirely different picture to the assertions of unqualified success which are repeatedly stated by the PIAB in all their press releases and on their website (see e.g. *The “Ryanair” of accident victims is on crash course – Irish Independent 31st October 2006 – and - Accident victims are ignoring injuries board – Irish Independent 21st July 2007- appendix 2 and 3*).

To put any comparisons between Ireland and Scotland into a correct perspective, it should be borne in mind that Scotland has a population of about 1 million more people than Ireland (Ireland 5 million, Scotland 6million).

I understand that the context in which the PIAB was set up was that there were about 25,000 PI claims *per annum* and that claims were taking in excess of 3 years from the instigation of court proceedings to resolve. The huge volume of claims and the expense that is consequent on a slow moving legal process led to unprecedented increases in insurance premiums and justified calls for reform. It is against this background that tort reform leading to the establishment of the PIAB was implemented. This falls to be contrasted with the Scottish position at the time when the PIAB was being set up. We had only 20% of the number of Irish claims being litigated *per annum* (despite having nearly 20% greater population). Scottish claims were taking much less than half the time that Irish claims were taking to resolve. It can be seen that even before the chapter 43 reforms, the Scottish system was performing well and bore no comparison whatsoever to the excesses of the Irish system.

Paragraph 2.19 states “It is said that the new process delivers compensation without the legal costs and experts’ fees that add, on average, more than 46% to the cost of a claim.” The PIAB website contains a cost/benefit analysis by Dr Vincent Hogan of PIAB claims as compared with the legal costs of non PIAB cases. I am not an expert statistician but it seems to me that the exercise failed to take account of some of the most important circumstances and therefore produced a result which was not objective. It has been reported that something of the order of 90% of claimants *choose* to be legally represented in the processing of their claim before the PIAB, even though they know they will not be able to recover this expense from the wrongdoer. Dr Hogan does not include this expense in his comparison and thus it is not a true comparison. In all claims assessed by the PIAB, liability is deemed to have been admitted. If the comparison between PIAB assessed cases and litigated cases includes cases in which liability was not admitted (which tend to be much more expensive to investigate, litigate and settle than admitted liability cases) then the comparison is not comparing like with like and is thus valueless.

The Irish Courts Service Annual Report 2006 states that 2673 PI summonses were issued in the High Court in 2006 as compared with 746 in 2005. In 2006 – 2343 PI actions were raised under the Chapter 43 rules in the Court of Session. The Irish

Report also records that the lowest PI award in the High Court was 2,500 euros with about 70% of the awards (total number of awards 176) being for less than 99,999 euros. During 2006 1,298 cases were issued in Dublin Circuit Court. Awards were made in 1102 Circuit Court cases. The lowest Circuit Court award was 176 euros and the highest 59,551.96 euros. I am informed that the trend of increasing numbers of PI case summonses being issued has continued in 2007

These figures tend to suggest that the position in Ireland with regard to speed of resolution and cost of resolution of PI claims is worse in some respects than the position in Scotland, despite the so called “reform” by the imposition of the PIAB.

The time that every Irish case requires to spend going through the PIAB now requires to be added to the time spent in the court process for the growing number of cases that are not resolved by the PIAB. Similar considerations might apply to the wasted expense of the PIAB process. It is significant to note that years after the Irish “reform,” more PI cases were being raised in the highest Irish civil court than were being raised in the highest Scottish civil court, despite Scotland’s greater population.

Post “reform” Irish PI litigants whose cases are not resolved by the PIAB face delays that would be unthinkable to Scottish litigants enjoying our chapter 43 procedure.

It has been estimated that the PIAB cost 35 million euros to set up. It was intended to be self-financing but this had not happened by 2007.

Considering the above, I can see no justification for any body similar to the PIAB being recommended by the Review. I would go further and suggest that any argument favouring such a body in Scotland was unsupportable when the background facts and circumstances came to be examined.

Chapter 3:

1. The review should exercise caution when looking at the SLAB figures in paragraph 3.3. To the uninformed there would appear to be a disparity between the “cost per case” of ordinary actions and PI actions. PI actions almost always involve investigation of the facts and involvement of expert witnesses in respect of liability and damages. Actions of debt rarely involve these elements. Furthermore, the figures given for the cost of litigating PI actions in the Court of Session do not compare like with like, because legal aid is only granted in PI cases with an estimated value in excess of £50,000, which for the reasons I have given are likely to be more difficult to prepare and litigate than a simple action of debt for a sum in excess of £50,000.
2. I do not deal with parties who are at the stage when they are simply considering PI litigation thus I cannot give any information on this matter.
3. I cannot comment on this matter as it is outside my area of knowledge.
4. The current rules for recovery of judicial expenses are wholly unsatisfactory. I cannot see any basis in reason or equity why a claimant who has been injured by the fault or breach of statutory duty of another and who requires to litigate because the wrongdoer

fails to offer realistic compensation should have to pay anything towards his/her representation which would never have been necessary had it not been for the acts of the wrongdoer. In my view this is a manifest injustice and should be remedied immediately. Some parts of the Reviews' recommendations may take a considerable time to reach implementation. This is something that can and should be remedied without delay.

5. The current arrangements for taxation of judicial accounts are hopelessly unsatisfactory. The rules are rooted in procedures which were devised at the beginning of the last century. The principles applied (and sometimes misapplied) bear no relationship to the modern world. In the field of PI litigation the approach taken in taxation of even the most complex cases worth many millions of pounds appears to be to regard these cases as involving similar work and commitment as cases in which a pedestrian slips and sustains a minor sprain injury. When wholly unsatisfactory decisions arise from a taxation the Outer Houses judges who hear the Note of Objections are compelled to apply archaic rules which bear no relationship whatsoever to modern practices nor the complexity of today's PI litigation. Some of the more recent decisions appear to encourage "brinkmanship" by defenders contrary to the ethos of the chapter 43 procedure and the general opinion that the earlier cases are resolved the better. See e.g. *Jarvie -v- Greater Glasgow Primary Care NHS Trust (2006) CSOH 42*. The consequence of the current arrangements for the taxation of judicial accounts by the auditor on a party - party basis is that counsel (and solicitors) acting for claimants (pursuers) recover much smaller fees than those acting for defenders whose fees are taxed on an agent and client basis. The effect on "equality of arms" and thus access to justice for the people of Scotland is obvious and need not be elaborated upon. I should add that I think it is offensive in principle that a person who has been held to have suffered a legal wrong should be required to meet any of the expense of vindicating his entitlement to a remedy for that wrong. If the Scots principle of restitution is applied, all of this expense should be borne by the wrongdoer (or more accurately by the unsuccessful party). It follows that all expenses should be calculated on an agent and client basis.

6. This deals with a stage in the legal process with which I have little practical experience.
7. In PI litigation, trades union funding for employers liability cases has shrunk to almost nothing. Trade union funding together with legal aid funding were the principal sources of funding until the end of the 20th Century. Trade union funding has all but disappeared and I am advised by solicitors that legal aid funding is now extremely difficult to secure and in any event many Scottish citizens are ineligible for legal aid on the basis of the low financial limits. Speculative fee arrangements have filled the gap to some extent. For example, during 2007 to 2008, advocates funded PI claimants to the value of between £5 and £6 million. This was nearly three times the value of funding provided by the Scottish Legal Aid Board.
8. Speculative fee arrangements have been a lifeline to PI claimants since the end of the last century. Had it not been for speculative fee arrangements many PI claimants including some who had suffered catastrophic injuries would have been unable to secure representation. I have accepted instructions in many cases on a speculative basis. Last month I required to “write off” nearly £30,000 in respect of irrecoverable fees in speculative cases. The rules allow for a 100% “uplift” to take account of the fact that counsel is acting on a speculative basis. I have never been able to secure an arrangement for any uplift and I have only been able to identify one advocate who has ever been able to arrange uplifts in Conditional Fee Agreements.

I have highlighted the unfairness of the present way in which party/party accounts are dealt with. I would suggest that this is the first problem to be addressed. When addressing this problem the change in rules should provide that uplifts should be recoverable on a party/party basis provided that the uplift is reasonable. It is readily apparent that the present wholly unfair rules for recovery of a claimant’s legal expenses could be a substantial disincentive to the acceptance of speculative work. This would have an obvious and direct negative effect on access to justice for the people of Scotland.

At presents solicitors and advocates are forbidden from accepting instructions on a contingency basis (whereby they would recover a percentage of the damages recovered). This prohibition has been circumvented by a number of firms of solicitors by means of forming separate companies who enter into contingency agreements with clients and these companies then instruct the solicitors to whom they are tied to act for the claimant. The companies are unregulated by any of the rules governing the conduct of solicitors or advocates and it is at least possible, that some claimants could find themselves at a disadvantage. Since the prohibition on acting on a contingency basis is being circumvented, I would suggest that the only logical course would be to remove the prohibition and allow solicitors and advocates to act on this basis subject to rigorous controls imposed by the Law of Society of Scotland and the Faculty of Advocates. I would respectfully suggest that anything short of this would be to ignore the reality of a growing source of funding for claimants which has not to my knowledge resulted in particular prejudice to clients but if left to grow unchecked has the potential to do so.

9. Yes.

10. The major impact that the ability to recover “after the event” insurance premiums would be to remedy a patent unfairness. It respectfully seems to the writer to be unfair that an injured person should require to pay out of his/her own pocket for successfully recovering damages from a wrongdoer. It is said that the ability to recover “after the event” insurance from an opponent has led to a large volume of Court appearances in England. From my contact with English colleagues I have been informed that this was so, but has now resolved itself to a very large extent.

Chapter 4

1. I do not have the statistical information nor the practical experience to comment on this matter but anecdotal information from colleagues on the Court of Session bench suggests that the conduct of civil business and in particular the availability of judicial resources is heavily impacted by a huge volume of criminal appeal work. The Chairman of the Review has more knowledge about the effects of the pressure of criminal business on the Court of Session than any other person in Scotland and I don't think any comments from me could add to his knowledge.
2. I am wholly in favour of judges in the Court of Session and Sheriffs in the Sheriff Courts being designated to deal with civil business. It appears to me to be absurd to direct a practitioner who has spent 20 or 30 years of his career doing criminal court work to switch interests and attend to civil work and *vice-a-versa*. I accept that it is necessary to have judges and sheriffs who can cross over from one area to another so as to maintain flexibility in the allocation of judicial resources. However there is still room for specialist judges and sheriffs in either the criminal or civil fields. I think it would serve the public better to have judges and sheriffs who have spent the bulk of their professional careers in one area of law or another to remain in that area whilst on the bench.
3. Yes. The advantages and disadvantages are as outlined above.

Paragraph 4.27 of the consultation papers suggests that separation of the Courts into civil and criminal divisions might have an adverse effect on recruitment of judges. My only comment about this is that in any conversations I have had with colleagues who have become judges in the Court of Session, nobody has suggested that one of the main attractions was that they would be doing criminal business after spending most of their careers doing civil business. Quite the contrary, such discussions as I have had gave me the impression that going on circuit to preside over criminal business is a major disincentive to practitioners who have spent most of their career doing civil business in Edinburgh.

4. Yes there is already a degree of a specialisation within the Civil Courts. Commercial causes have their own rules and procedures. Personal injury cases have their own

rules and procedures under Chapter 43. Judges are designated commercial judges in the Court of Session. I think their specialisation should go further and some judges should be designated “reparation judges”.

5. I have no practical experience in making the decision as to whether an action should be raised in the Court of Session or the Sheriff Court. I would comment, however, that the oft repeated suggestion that large numbers of “low value” cases are raised in the Court of Session is a myth. So far as I am aware no personal injury action seeking payment of less than £5,000 has been raised in the Court of Session during the past decade.
6. The Court of Session should have exclusive jurisdiction in respect of all personal injuries cases in which the value of the award is likely to exceed £100,000. It should be borne in mind that in PI cases the pursuer is always an individual. An award of £100,000 would almost certainly be one of the most important events in that person’s life. I would respectfully suggest that the people of Scotland deserve the highest quality of representation and the highest quality of judicial decision making for litigation which could have such a significant impact in their lives. It could take the average Scot up to 5 years of his/her working lifetime to earn this amount of money. When investigating the Irish court statistics I noted that higher value cases were heard exclusively by the High Court (I note that the High Court sits in various regional centres). I would respectfully suggest that if it is deemed that Irish citizens should have higher value cases heard by the High Court rather than the County Court, Scottish citizens should expect no less.
7. No, but it is possible in certain types of action to have a significant overlap to allow interchange between the two Courts.
8. No. The people of Scotland should have access to the Outer House of the Court of Session as a court of first instance. As stated previously they should be entitled to the highest quality of representation and the highest quality of judicial decision making. When examining the Irish system, I noted that they divided their upper courts into the

High Court and the Supreme Court. The High Court is a Court of first instance similar to the Outer House of the Court of Session. The Supreme Court is an appellate court similar to the Inner House. I have not heard any convincing suggestion as *why* the Outer House of the Court of Session should (in effect) be abolished. Decisions of the Outer House of the Court of Session in the field of PI have had a substantial influence on the law throughout the UK for the past century (*see generally "Personal Injury in the Court Session - A review of the contribution Court of Session to the law of personal injury – I. Mackay QC and A. Smart, JPIL March 2008)*

9. As stated previously it is inconsistent with current social attitudes to set the levels of privative jurisdiction in purely monetary terms irrespective of the type of action. In the majority of PI actions the claim will be one of the single most important events in the claimant's lifetime. This may not have been so 50 years ago. Society has afforded greater importance to individuals recovering compensation for personal injury than was the case even half a century ago. In contrast the importance of the status of individuals has become less important; hence divorce is no longer regarded as being of such importance that it must be heard in the Court of Session. In considering privative jurisdictions the review should take account of the high level of importance that the Scottish people attribute to the obtaining of fair compensation for personal injuries.
10. I have addressed this matter in my appended paper.
11. I have no comment to make.
12. I have no comment to make.
13. The division of Sheriff Courts into distinct geographical jurisdictions is a Victorian construct which has no real relevance to 21st Century Scotland with easy private and public transport and digital and electronic communications. In the appendix paper I have suggested an Edinburgh based PI Court which would serve the whole of

Scotland and consist of an upper tier (the Outer House of the Court of Session) and a lower tier (Edinburgh Sheriff Court).

14. I have no comments to make.
15. I have no comments to make.
16. I have no comments to make.
17. I have suggested a national personal injuries court.
18. I have no comments to make.
19. I do not consider that there is any persuasive case for the Sheriff Court to become the primary court of first instance.
20. I have no comment to make.
21. I have no comment to make.
22. I have no comment to make.
23. I have no comment to make.
24. I have commented on this matter in my appended paper.

Chapter 5:

1. I have no comment to make.
2. Mediation has not taken off in the field of personal injuries in Scotland despite encouragement towards mediation from a number of sources. From a self interest

point of view, the imposition of mediation would be a fee earning opportunity for lawyers and thus might be welcomed.

In reality once PI cases enter the Chapter 43 procedure the vast majority settle without the intervention of mediation or judicial control. Imposed mediation at any stage would add a further layer of expense to PI resolution and would thus tend to increase the cost of litigation contrary to the Reviews' remit as stated in paragraph 1.2

3. I have no comment to make.
4. I have no comment to make.
5. I have no comment to make.
6. I have referred to this extensively in my appended paper.
7. The control by the Court as exercised in the Chapter 43 rules is efficient and operates with a minimum of judicial intervention and expense to the party.
8. The case flow management system operating in Chapter 43 is ideal for PI cases.

Chapter 6:

1. I have suggested a form of pre-action protocol in the appended paper.
2. See answer above.
3. I have suggested in the appended paper that compliance should be compulsory.
4. No. The flow management system in the Chapter 43 procedure works efficiently and with the minimum of expense. A requirement for leave at various steps would involve delay and expense and would thus tend to increase the cost of litigation contrary to the Reviews' remit as stated in paragraph 1.2

5. Provided that there is a review of the whole system of civil justice maybe twice every century, the current arrangements would suffice. The problem with the present arrangements is that rules are revised in a piecemeal fashion which often avoids making major changes to the system which must occur of the civil justice system is to reflect society's changing values and aspirations. The introduction of the Chapter 43 procedure was a substantial change to the previous rules (as opposed to piecemeal tinkering) and has gone a considerable way to streamlining PI claimant's access to a remedy.
6. Yes. See my appended paper.
7. No. See my appended paper.
8. I have no comment to make.
9. I have no comment to make.
10. I have no comment to make.
11. I have no comment to make.
12. No. The imposition of a timetable is not practical with regard to a hearing in which evidence is to be led. Many factors can affect the length of examination and cross examination including factors completely outside the control of the parties' representatives such as witnesses who answer questions at great length and in great detail. Substantial injustice could occur if parties are prevented from leading evidence they consider to be important by reason of time limitations.
13. It is now becoming increasingly more common for advocates to supplement their oral arguments with summaries of their arguments. This change is happening without the requirement of compulsion and is likely to be an almost universal practice before the Recommendations of the review are implemented.

14. The Chapter 43 rules have provided for greater disclosure in PI cases. Recent decisions have provided that pre-accident medical records should be capable of being obtained by defenders in all cases, so as to enable them to be satisfied that the claimant did not have any pre-existing conditions which would affect his/her ability to work or care for himself/herself.
15. I do not understand what is meant by “have control over”. I do not think that the practice of the Court appointing a single expert to investigate and report on a matter is a sound idea. In my view such a process could have the effect that the expert would usurp the function of the judge.
16. I do not favour the introduction of pursuer’s offers for the same reasons as led to the system of pursuer’s offers being abandoned. The present system of tenders is sufficient to ensure that parties acting reasonably are not penalised. I am aware of the English Part 36 rules. If the *restitutio* principles of Scots Law are applied to the question of expenses, they would provide that a successful pursuer should be entitled to recover his/her whole expenses if he/she acted reasonably whether or not there was a “pursuer’s tender”. As outlined above, there is no reason in principle or equity why this should not be on an agent and client basis. Pursuer’s tenders would be unnecessary if proper principles were applied.
17. I would suggest in the strongest possible terms that civil jury trials should be retained. Their popularity with PI claimants is increasing year by year. In judicial pronouncements jury awards have been said to mirror society’s values and expectations with regard to levels of damages. As such, the level of jury awards provides an invaluable guide to judges as to levels of damages appropriate to given injuries and thus constitutes a valuable resource for the judiciary. There are many recent examples of juries consistently making awards of damages (for example in fatal cases) which are higher than judicial levels and thus reflecting society’s expectations and values better than judges. To remove the public’s statutory right to a trial by jury would be directly contrary to the reviews’ primary purpose of improving access to justice for the people of Scotland.

18. Yes. However, new rules should be introduced to the effect that in all but exceptional cases, written judgements **must** be issued within 28 days. Delays in the issuing of written judgements in relatively straightforward cases appear to me to have increased substantially in recent years. Such delays can cause distress and hardship to litigants and an efficient legal system must have rules to ensure that such delays do not occur. The present open ended rules which allow written judgements to be issued many months (and even years) after a hearing have the effect of denying access to justice contrary to the Reviews' remit as stated in paragraph 1.2
19. There are sufficient powers but these are rarely used.
20. I have no comment to make.
21. I have no comment to make.
22. I have no comment to make.
23. I have no comment to make.
24. I have no comment to make.

Ian Mackay Response Appendix 1

Civil Courts Review

Personal Injury Claims Resolution

Overview:

In attempting to suggest an efficient process for the resolution of personal injury claims (P I claims), I have tried to place the primary purpose of the Review “to improve access to justice for the people of Scotland” (paragraph 1.9) foremost in my proposal. I have also tried to incorporate “proportionality and value for money”. I am aware of concerns that judicial time should be utilised efficiently and I have tried to suggest a way in which this could be achieved with claimants continuing to enjoy access to the high standards of judicial decision making that they enjoy today.

I am conscious that any proposals requiring significant capital expenditure may face problems being implemented in consequence of government budgetary constraints, so I have attempted to devise a process that utilises existing building resources and no additional personnel. I do not have technical backup to enable me to undertake a cost/benefit analysis, but it is certainly consistent with experience in commerce and industry that centralisation such as I propose usually results in significant cost savings.

Outline of Proposal:

The first and probably most significant change would be to centralise the whole P I claims procedure to a single Scottish location. The present court jurisdictions and systems of rules are a relic of conditions obtaining in Scotland well over a century ago. The historical context in which these jurisdictions and rules were devised was that people involved in PI claims had little or no access to cheap and efficient public or private transport, telecommunications were non-existent and P I claims were rare and mostly of low value. In the Victorian era the claims resolution system had to be local because it would have been very difficult and inconvenient for parties and their agents to undertake all the necessary process work, if the place where all documents/motions/steps in process/productions required to be lodged was tens or even hundreds of miles away. This is in stark contrast with the situation today when the majority of Scotland’s population (living in the central belt) are within an hour’s drive of Edinburgh and most others south of the Great Glen are within two hours drive. In 21st century Scotland geographical proximity to the centralised claims resolution body is of little significance so far as process work is concerned. Internet transmission of documents means that an agent (or in individual) in Stornoway or Wick could lodge documents with the resolution body just as easily as an agent with an office next door to the resolution body, provided the resolution body had systems to receive, record and acknowledge receipt of these documents. Today’s electronic data storage systems would mean that all the electronically transmitted documents could be stored

easily and retrieved efficiently as opposed to the present archaic requirement for vast document storage space and inefficient process of manual retrieval of documentation. The cost savings and efficiency gains resulting from eliminating the enormous volume of paper documentation are obvious.

The single location I suggest is Edinburgh. I appreciate that some people would argue that Glasgow would be more appropriate as the single location but for reasons that will become obvious when considering the detail of the proposal, Glasgow would not allow the flexibility of judicial resource options. Some people might argue for a dual location (Edinburgh and Glasgow) but this would be impractical for the same reason. Besides, many Scottish institutions have one location (e.g. the Court of Session and the Scottish Parliament) and nobody would suggest that it was logical to divide them between the two cities

The claims resolving mechanism I suggest is multi stage but under a single set of rules. Each stage can be seen as a separate and distinct chapter of the whole process. The escalation of expense is gradual as is the involvement of the formal legal process.

Personal Injury Claims Resolution

Stage 1 –intimation of the claim:

The rules for the subsequent formal claims procedure would provide for a mandatory claim intimation which must have taken place (unless there are exceptional circumstances) before the formal claims process can be commenced. The rules would provide that at least 28 days prior to formal raising of a claim the claimant must intimate a claim in a manner prescribed by the rules.

The rules should provide that the intimation should:-

1. Seek a specific sum as damages.
2. Specify the circumstances causing the injury and the nature of the loss and damage.
3. Provide a copy of a medical report.

This part of the procedure is the simplest form of pre-action protocol. It does not involve the court in any part of the process. It gives the defenders the option of avoiding litigation expense altogether by making the appropriate offer. It can be undertaken by a claimant (or his agent) from any location in Scotland.

Stage 2 – formal commencement of the claim:

Commencement of this stage is by means of a simple writ. This would be done using online document procedures similar to those in the present small claims procedure or the Irish PIAB procedure. The writ need not be any more complex than the PIAB application document. The Review will be able to see a copy of the application document on the PIAB website. It would not be necessary to provide a copy of a medical report as this would have been done at the intimation stage. While the litigation would have commenced at this stage, it would not require the physical lodging of any document. The litigation would be recorded on a database at the single location. As with present procedures, actual commencement would not take place unless and until Court fees were paid by the claimant. Since no documents would be lodged and the record of the claim would be held on a database, it would be better described as “virtual” litigation at this stage.

I would suggest that Defenders should have 28 days to respond to the claim. The response would require to follow one of three prescribed forms:

- (a) an admission of liability and an offer to pay a certain sum as damages.
- (b) an admission of liability and a request for the Court to determine damages.
- (c) a denial of liability with an explanation as to why liability is denied.

Defenders responding in the form of (b) and (c) would require to state whether they wished the matter to be determined at the lower tier (Sheriff Court) or the upper tier (Outer House of Court of Session).

The response would be communicated electronically to the central location and to the claimant thus the whole process remains “virtual”.

Upon receipt of the response the claimant would have 14 days to decide whether to accept an offer of a specified sum in damages if it is made and/or whether to litigate at the tier suggested by the Defender. If the claimant chose not to accept the sum offered or if the Defenders responded as in (b) or (c), the claimant would indicate whether or not the tier suggested by the Defenders was acceptable.

In this way parties would choose whether to litigate at Sheriff Court level or Outer House level. If the claimant did not accept the Defenders’ suggested tier the matter would be submitted to a PI allocation or sifting Judge who would determine which level or tier was appropriate. The Judge would follow guidelines which had been approved by the Lord President. I would envisage that the primary guideline would relate to the value of the claim. I would suggest that something of the order of £10,000 would be the appropriate level below which a case would not be suitable for the Outer House, unless there was a question of novelty difficulty or importance. The case would then follow a procedure similar to the present Court of Session chapter 43 procedure (subject to the changes outlined below) whether it be in the Sheriff Court, or the Outer House.

I suggest Stages 1 and 2 for a number of reasons:

Stage 1

This would take the place of the present voluntary pre-litigation protocol. It is, at least possible, that it would focus the parties to engage in settlement discussions at this stage because litigation with its attendant expenses would be imminent and inevitable. It is simple and could be conducted electronically by parties wherever they may be located in Scotland. Its’ simplicity avoids some of the difficulties which have emerged regarding pre-litigation protocols, such as cost of compliance.

Stage 2

This stage would fulfil some of the goals of the Irish PIAB without the manifest problems which have arisen since the formation of that body. Once again, it can be utilised by parties throughout Scotland irrespective

of their location. With the exception of the final allocation process, this stage would involve very little or nothing in the way of administrative resources. It is conceivable that it would involve much less in the way of administrative resources than the present system which requires extensive administrative manpower at this early stage. The present system is wasteful of such manpower because it is duplicated in the Court of Session General Department and in Sheriff Clerks Departments throughout Scotland. While the utilisation of electronic communications and data storage would reduce most of the administrative manpower requirements (and thus costs), the centralisation of the whole process would go even further in reducing manpower requirements.

An offer made by a Defender at this stage may be founded upon later by the Defender in any question of costs, thus a Pursuer would be required to consider the value of his claim at this early stage, prior to there being any significant legal or Court expenses incurred.

The procedure whereby a Defender has an input into the question of the tier in which the case is litigated would be fair because it is the Defender who would require to pay the legal expenses in all but a tiny minority of cases. Ultimately if there was disagreement between the parties, the Court would have the final say (subject to appeal) as to the appropriate tier into which the case should be placed.

Stage 3

It is really at this stage that the actual (as opposed to virtual) litigation begins to emerge. I refer to the litigation prior to this stage as “virtual” because prior to this stage it only exists in the form of digitally stored data with no administrative input until the allocation process.

I would suggest the succeeding process should mirror the present chapter 43 procedure except that the use of paper documents should be avoided wherever possible. For example, the first step for a claimant would be to convert the claim form into a document similar to the Summons in the present chapter 43 procedure in order to give the Defender sufficient intimation of all aspects of the claim. The Defender would require to submit Defences for the same reason. That said, I see no reason why this process cannot be done using electronic documentation. Once again, the consequence of using electronic documentation is that the whole process could be undertaken by parties wherever they are located within Scotland.

If parties choose to be represented by Edinburgh Solicitors because of expertise in this area of law it would not necessarily mean physical travel to Edinburgh because most communications between Solicitor and client can be done by telephone or online.

If there are parallel tracks in the Outer House and in the Sheriff Court at Edinburgh, a cross over from one tier to another would be relatively straightforward. The physical transfer from one tier to another might only involve moving a computer file and/or a relatively few number of documents from one shelf or section of a building to another. The transfer of electronic documentation could be done instantly. The advantage of an ability to transfer from one tier to another would be substantial and would resolve some of the difficult problems the Review requires to deal with such as the present entitlement in PI cases for trial by jury. Easy transfer would enable litigants litigating in the lower (Sheriff Court) tier to seek a trial by jury. To do so they would simply apply to a Judge in their particular tier for trial by jury and if the case fulfilled the present criteria for trial by jury it would be moved to the upper (Outer House) tier. One of the major objections to

restricting personal injuries cases of a relatively low value (for example under £10,000) to the Sheriff Court is that the restriction would result in the Pursuers in such cases losing their present entitlement to have their case tried by a jury. A twin track process would enable transfer to be made with relative ease, the object being preservation of a Pursuer's entitlement to trial by jury. It would also be possible to have easy transfer in the other direction, for example, when a Judge in the Outer House observed that the case was relatively straightforward, of modest value and was not arranged to be heard by a jury.

Members of the Review are fully aware that the chapter 43 procedure involves very little judicial input until the final stages. One major cause of concern is the problems which arise in attempting to allocate judicial resources for proofs while trying to take account of the large number of settlements in close proximity to the commencement of proofs. The chapter 43 procedure has resulted in significant improvements in reducing the volume of late settlements but I am led to understand that some problems over the allocation of judicial resources persist. I should indicate that late settlement has become a very significant problem for Advocates and it impacts severely on their ability to maintain a high level of court appearances and thus earn fees. Little or nothing can be recovered by the advocate in respect of a 4 week case that settles a week before a hearing and it is practically impossible to secure work to fill the 4 week gap in his/her diary.

So far as judicial resources are concerned I would suggest that proofs should be scheduled to start on Monday or Tuesday in the Court of Session and Wednesday or Thursday in the Sheriff Court. Provided Edinburgh Sheriff Court had a pool of specialist personal injury Sheriffs they could also have the status of Temporary Lords Ordinary. If there were a large number of personal injury cases set down for a hearing in the Court of Session in a given week then, it might be possible to utilise their services in the Outer House if, for example, their cases which had been set down to commence on the Wednesday or Thursday of the previous week had settled. A similar situation might happen on a Thursday if a Lord Ordinary were to be available because his/her proofs set down to commence on a Monday or Tuesday in the Outer House had settled and he would thus be able to assist in the Sheriff Court regarding their cases commencing on a Wednesday or a Thursday. A single location process would give a degree of flexibility in the allocation of judicial resources which should be a very effective utilisation of judicial resources and should involve the cost savings that usually arise from increased flexibility and efficiency.

I have observed on some occasions that many of the courtrooms in the Court of Session are unused on Wednesdays, Thursdays and Fridays. I am unaware of the degree of utilisation of the courtrooms in Edinburgh Sheriff Court. I am aware that the High Court of Justiciary uses Courts in the building which was formerly Edinburgh Sheriff Court. I am unaware of the degree of utilisation of the Courts in this building. I would suggest that investigation should be made to see if it could be possible to utilise any under used Court space within these Court buildings to accommodate a more flexible allocation of judicial resources. It may therefore be possible to centralise personal injury dispute resolution to Edinburgh without any capital cost implications, indeed that centralisation may result in significant cost savings. I appreciate, of course that it would be necessary to have additional Sheriffs in Edinburgh.

In the previous paragraphs I have suggested that documentation should be electronic (at least as much as possible). During this Court term I have handled dozens of personal injury cases. There was not a single instance in which my papers were less than three lever arch folders. In most there were more than four lever arch folders and in three (catastrophic injury cases) there were four boxes containing at least fourteen lever arch files. In the latter the page count could be more than 4,000. In all cases this huge bulk of paperwork could have been reduced to a single disc. In the more complex catastrophic injury cases the lodging of ten

lever arch folders means that the process contains many thousands of pages of documentation. Since most cases settle this huge volume of documentation is simply pulped without ever being used in Court. Even if a proof goes ahead only a tiny minority of the documents are actually used. Quite apart from being wasteful and expensive this situation results in the necessity of the Courts administration providing physical space for material that will never be used. The rules I would propose under the scheme I have outlined would permit digital documentation to be lodged provided that hard copies of every document which was going to be referred to during the evidence were also available. Once again, if this approach is adopted, documents can be lodged by electronic transmission from any location in Scotland.

I am aware that persons making submissions to the Review have suggested that PI work might be undertaken in certain centres such as Glasgow, Edinburgh, Aberdeen, etc. This is a suggestion which might have had some force in the middle of the last Century. It is my understanding that the Review is considering how to proceed in the 21st Century utilising all the technology that is available today and in the short term future. A realistic appraisal of the whole of personal injury litigation in Scotland would show that the vast majority of cases settle without the necessity of having a proof. It is only during a proof (with a few limited exceptions) that parties and their witnesses require to attend Court. All the background work involving Court Runners lodging documents in the Court of Session and in the Sheriff Clerks Office could be reduced to almost nil. As I have suggested earlier, when the necessity for the physical lodging of documents disappears, the necessity of the parties and their legal advisers living/practising in geographical proximity to the Court disappears. For the tiny minority who require to attend a proof, travelling to Edinburgh from any part of the country is no longer the challenging and expensive undertaking that it was when the whole structure of local Courts was established. Even if travelling to Edinburgh (for the tiny minority of PI litigants that would require to do so), involved some degree of inconvenience, this would be a tiny price to pay for the overwhelming advantages and economies of scale that would arise from centralisation. I would not have suggested this course if the norm in PI litigation was that it involved many appearances and the attendance of the parties for these appearances (such as happens in procedures involving judicial case management). In fact the reality is precisely the opposite. In the vast majority of cases there are no appearances of any kind. In these cases there could be no argument (or at least no logical argument) against the economies of scale that would arise from centralisation. In the minority of cases where appearance is required, almost all the appearances are procedural and do not require the attendance of the parties. These procedural appearances could be instructed electronically from any part of the country. It is extremely rare for parties to attend court for process or procedural appearances. In the last year for which figures are available roughly half of the approximately 5,000 personal injuries cases litigated in Scotland were litigated in the Outer House of the Court of Session and half in the Sheriff Courts. It is my understanding that over 98% of these cases settled prior to the morning of the proof. It would thus appear that the number of people who would have to travel to Edinburgh for a proof if all PI cases were to be centralised, would be tiny. Whether this would be an inconvenience or whether they would enjoy the day out is another matter. Suggestions that the present archaic geographical jurisdictions should be retained because of notions of convenience to the litigants are in the case of PI litigation misconceived and do not accord with the actuality of PI litigation in which only a tiny fraction of the litigants are ever required to go near any court building. This is in contrast to small claims procedures/debt actions which are well suited to local jurisdictions

One significant advantage enjoyed by PI litigants who choose to litigate in the Court of Session as opposed to the Sheriff Court, is that they can employ advocates to represent them with the certainty that they will be

able to recover a substantial proportion of this expense should they succeed. If my suggested scheme were to be implemented it would be important to ensure that the rules provided that they could still recover the cost of employing an advocate to appear for them even if the case were allocated to the lower tier. The rules should also provide that it would not be necessary for instructing solicitors to appear behind counsel during appearances, except during proofs.

Part of the scheme I am putting forward (the chapter 43 procedure) is already running with a considerable degree of success. The other parts are relatively straightforward and only require the deployment of technology and computer programmes which already exist. I do not foresee any immense difficulty in drafting rules for the parts of the procedure not already covered by the chapter 43 rules and I would be happy to provide draft rules for the Reviews consideration. I put this proposal forward as a self standing process which would operate using the suggested rules irrespective of procedures in other areas of Civil Law, until the stage of appeals when it would follow the same procedure as all other civil appeals. I see no merit in adapting and modifying processes which were developed to meet the needs of the population of Scotland nearly a century ago, but I do see much merit in incorporating the chapter 43 procedure which has the advantage of having been devised in the present century. I note from paragraph 6.31 of the Consultation Document that there has already been a suggestion that “all actions should be initiated at the same level, and possibly even at a central entry point”. My proposal seeks to give a working model for this suggestion.

I would thus commend this model procedure to the Review as a means of improving access to resolution of personal injuries claims for the people of Scotland in accordance with the primary purpose of the Review as stated in paragraph 1.9 of the Consultation Paper.

Ian Mackay QC
March 2008

Ian Mackay Appendix 2

The 'Ryanair of accident victims' is on crash course

What are these?
Irish Independent Tuesday October 31 2006

PICTURE this. It is a Saturday night and revellers are thronging the streets of Dublin.

On the way home, one punter stumbles in the vicinity of a landmark city centre building. The only thing wounded is his pride, but days later he makes a trip to his solicitor.

He wants to lodge a personal injury claim. The solicitor sends an engineer out to inspect the site of "the accident". The engineer says the site is intact, solicitor advises no case to answer. Man goes home.

A few weeks later, he recounts the phantom fall to some friends in a pub. Try the new Personal Injuries Assessment Board, they say. Only €50, sure it's worth a shot. Turns out it's actually worth €10,000.

After filling in a form and popping his GP's notes and a €50 application fee in the post to the PIAB, the "injured party" receives an immediate settlement offer from the insurance company representing the "defendant" against whom he has lodged a fraudulent claim.

Boldly, he rejects the offer. Unlike claiming through the courts, there are no penalties for duping state assessors or unsuspecting insurance companies and no open hearings to weed out false or exaggerated claims.

Anxious to drive down costs and avoid a PIAB assessment or worse, a dreaded court action, the insurance company makes a second offer of almost €10,000. Man accepts cheque, case closed.

This is not fiction. It is one of thousands of "success" stories facilitated by the Personal Injuries Assessment Board, that is - according to its latest media blurb - delivering compensation "three times faster and four times cheaper" than the traditional route.

In the words of Patricia Byron, its chief executive who addressed a conference of British personal injury lawyers last July, the PIAB is "as simple as applying for an aeroplane ticket".

But is it? The *Irish Independent* has learned the PIAB, the Government's Do-It-Yourself linchpin in driving down insurance premiums, is beset by a series of problems. Previously unpublished figures reveal that the PIAB has made assessments in only 4,400 cases - less than one-in-eight of the 36,000 claims lodged with the new statutory body.

More than half of all claims (18,400) are not being dealt with by the PIAB because insurance companies settle claims directly with claimants before an assessment is made (31pc);

because they are disputing liability (14pc) or because the application is not within the PIAB's remit (7pc).

Two years after Dorothea Dowling, the PIAB chairwoman, declared it a "lawyer-free zone", over 90pc of claims received by the agency are from solicitors. To add insult to injury, four-out-of-every-10 awards made by the PIAB are being rejected. It boasted it would wipe out legal fees, but the PIAB has shelled out hundreds of thousands of euro defending a series of High Court actions that have undermined its no-fault, no-lawyer mission.

With a mounting backlog of cases to process (over 12,000) and the prospect of the PIAB hitting a statutory wall next year because of strict time limits on its assessments, can the claims agency weather any more turbulence?

The PIAB was, on the surface, a stroke of genius. The low-cost, no-frills agency (Ryanair for accident victims) was introduced by the Government to tackle Ireland's crippling compensation culture. Two years ago, the PIAB began to assess all claims for routine victims of workplace, motor and public liability accidents where liability was not disputed. It was set up to reduce the exorbitant costs of personal injury claims by doing away with the need for lawyers. Compo-culture parasites were racking up a yearly €100m fraud bill.

The Government responded with the PIAB, prompting a vicious death match between the insurance industry (keen to protect its annual €698m profits) and the legal profession (which saw a third of its income vanish overnight).

When the debate went into overdrive, Ms Byron, a former executive with Hibernian Insurance, said it was time for lawyers to "stop whining and accept that the world can get by without them". In reply, the Law Society claimed the PIAB had made lawyers a scapegoat for the rise in insurance costs.

Long before the Punch and Judy-style spats began, Rory Brady, the current attorney general, warned the claims agency was a "fatally flawed project".

Five years ago, Mr Brady, a senior counsel, said the PIAB carried a substantial risk of a reduction in the level of awards that would ultimately be appealed to the courts.

The PIAB, he said, far from reducing costs, would add an unnecessary layer of bureaucracy, cost and expense. Those warnings may be coming back to haunt the Government as it has emerged that four-out-of-every-10 awards are being rejected by both claimants and defendants.

Based on the courts service annual report, the average court award last year was about €24,000, but by the end of August this year, the average PIAB award was less than €17,000.

Insurance companies are also fighting back - disputing liability in one-in-seven claims. Thousands more claims have been deemed outside of the board's remit, so they must be dealt with by the courts.

ADD in the rejected awards and about a quarter of all the PIAB's claims are now headed back to the Four Courts.

To compound matters, 90pc of claimants are hiring solicitors after a High Court ruling which affirmed the right of citizens to be legally represented, even in administrative settings. The ruling has been appealed to the Supreme Court by the PIAB, who have vowed to "fight to the death" against lawyers.

The spats are entertaining, but the real concern is that owing to strict time limits, the PIAB is on a collision course with a statutory iceberg next year because it cannot process claims fast enough.

Ian Mackay Appendix 3

Accident victims 'are ignoring injuries board'

New figures reveal 350pc increase in cases lodged at High Court

By Dearbhail McDonald
Irish Independent Saturday July 21 2007

THE State service set up to speed up personal injury claims and eliminate legal costs has been abandoned by thousands of accident victims.

New figures released by Chief Justice John L Murray reveal that there has been a massive 350pc increase in personal injury cases lodged in the High Court over the past 12 months.

This is despite the fact that all such claims must first go through the State-funded Personal Injuries Assessment Board (PIAB).

The figures, which are contained in the Courts Service Annual Report, also revealed a sharp increase in the number of civil cases in the Circuit Court, due in part to releases of cases back to the courts by the PIAB.

Victims

The report also shows that accident victims are going to court to seek orders such as preserving evidence and securing inspection reports - something normally reserved for a court action - during the PIAB process.

The figures will come as an embarrassment to the Government which just weeks ago rushed through emergency laws aimed at preventing the PIAB from being derailed by claimants who are taking their claims back to the courts.

The emergency law was prompted by complaints from the State's personal injuries claims agency that claimants were turning down its awards and taking court actions in the hope of receiving much bigger settlements.

Last October, the Irish Independent revealed the Government-appointed PIAB was being derailed by claimants who were taking their claims back to the courts where higher awards - and crucially, legal costs - were handed down.

In the first-ever comprehensive insight into the operation of the PIAB, the Irish Independent has also revealed that the State board is struggling to assess thousands of personal injury claims within very strict statutory time limits.

The PIAB was introduced some four years ago to reduce soaring insurance premiums fuelled by fraudulent and exaggerated claims.

Lawyers

It was set up to reduce the cost of compensation claims by eliminating the need for claimants to hire lawyers but more than 90pc of claims are now being lodged by solicitors and 40pc of all claims are being rejected by claimants and insurance companies unhappy with the scale of the board's awards who have complained about the level of awards that are being handed down by the board.

Yesterday, hours after the figures were officially released, the PIAB issued a press release in which it announced that it had recorded an increase of almost 600pc in the number of awards that it issued last year.

PIAB, which previously hailed the dramatic drop in court summons as an indicator of its success, said that it issued 5,573 awards in 2006 compared to just 951 in 2005.

It said that the number of PIAB awards is expected to increase in 2007 - to 9,000 awards per annum - as claims volumes approach normalized levels.

- Dearbhail McDonald