

‘I never want to see you again...’

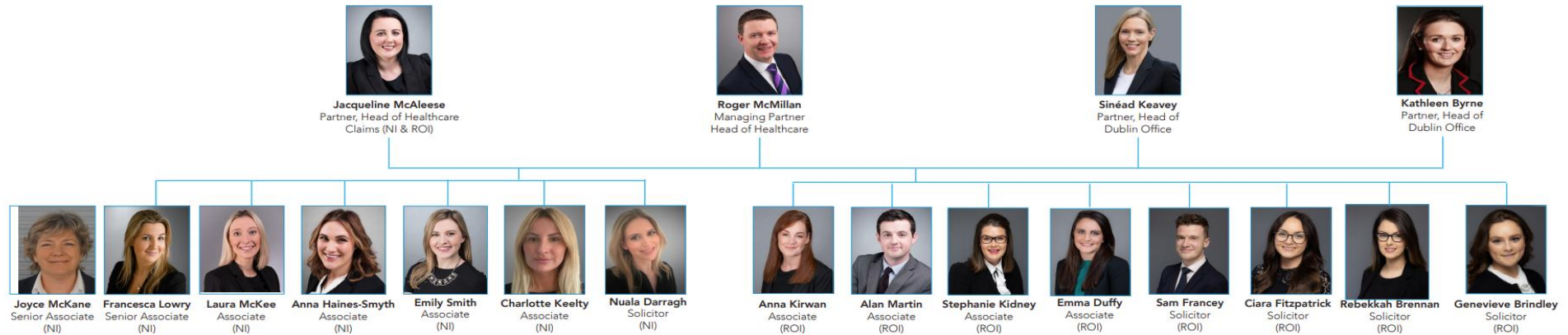
Roger McMillan, Managing Partner & Head of Healthcare  
Leigh Linton, Partner & Head of Regulatory & Professional Discipline

24 November 2022 (Roger’s wedding anniversary)



- Carson McDowell announced as one of the most elite law firms in UK  
*Chambers UK (October 2022)*
- 110 lawyers
- 27 practice areas
- 13 sectors
- Dedicated Clinical Negligence and Professional Discipline & Regulatory Team
  - Claims lawyers: 8 in Belfast and 12 in Dublin
  - Regulatory and Professional Discipline lawyers: 8 in Belfast and 4 in Dublin
  - Advising, assisting and protecting the reputations of GPs in Northern Ireland for over 100 years

# Healthcare Claims Team (NI & ROI)



BELFAST TEAM	EXPERTISE	MOBILE
<b>PARTNERS</b>	Roger McMillan Head of Healthcare Jacqueline McAleese Clinical Negligence Claims	+44 (0) 78 1389 8747 +44 (0) 78 2539 8512 +353 (0) 12 649 091
<b>SENIOR ASSOCIATES</b>	Francesca Lowry Clinical Negligence Claims Joyce McKane Clinical Negligence Claims	+44 (0) 79 2058 5919 +44 (0) 75 8102 9571
<b>ASSOCIATES</b>	Anna Haines-Smyth Clinical Negligence Claims Emily Smith Clinical Negligence Claims Laura McKee Clinical Negligence Claims Charlotte Keelty Clinical Negligence Claims	+44 (0) 75 0092 9648 +44 (0) 77 8751 0824 +44 (0) 75 8101 3663 +44 (0) 75 8101 4023
<b>SOLICITOR</b>	Nuala Darragh Clinical Negligence Claims	+44 (0) 79 7185 1526

DUBLIN TEAM	EXPERTISE	MOBILE
<b>PARTNERS</b>	Roger McMillan Head of Healthcare Jacqueline McAleese Clinical Negligence Claims Sinéad Keavey Clinical Negligence Claims Kathleen Byrne Clinical Negligence Claims	+44 (0) 78 1389 8747 +44 (0) 78 2539 8512 +353 (0) 85 870 0404 +353 (0) 85 256 2336
<b>ASSOCIATES</b>	Anna Kirwan Clinical Negligence Claims Alan Martin Clinical Negligence Claims Emma Duffy Clinical Negligence Claims Stephanie Kidney Clinical Negligence Claims	+353 (0) 85 868 5288 +353 (0) 85 256 9918 +353 (0) 85 256 9919 +353 (0) 85 256 1008
<b>SOLICITORS</b>	Sam Francey Clinical Negligence Claims Ciara Fitzpatrick Clinical Negligence Claims Rebekkah Brennan Clinical Negligence Claims	+353 (0) 85 860 5427 +353 (0) 12 649 089 +353 (0) 85 256 2031

# Regulatory Team (NI & ROI)



CONTACT THE TEAM		
<b>PARTNERS</b>	Roger McMillan	+44 (0) 78 1 899 8747
	Leigh Linton	+44 (0) 79 2058 5920
	Francesca Lowry	+44 (0) 79 2058 5919
<b>ASSOCIATES</b>	Rachael McArdrey	+44 (0) 78 2514 6467

Marley House, Marley Street, Balsham BT1 6DN | Tel: +44 (0)28 904 4951 | Fax: +44 (0)28 904 5281 | [www.carsonmcdowell.com](http://www.carsonmcdowell.com)  
Dublin Office, 27-28 Holborn Place, Dublin 2, D02 D0P7 | Tel: +353 (0)1 953 726

# Statistics (claims frequency/severity)



## Department of Health Statistics on Clinical / Social Care in Northern Ireland (2020/21)\*

- £21.9 million was paid on clinical / social care negligence cases in NI
- 3,872 clinical / social care negligence cases were open at any stage (225 (6.2%) more than in 2016/17)
- 483 new cases opened, 434 cases closed and 3187 remained open and 251 cases were settled as at 31<sup>st</sup> March 2021

[\\*Clinical / Social Care Negligence Cases in Northern Ireland \(2020/21\) | Department of Health \(health-ni.gov.uk\)](#)

Post pandemic decrease? Waiting lists?

# 'First Contact'

- Letter from Plaintiff Solicitors – request for records
- Protocol for Clinical Negligence Litigation
- Notify MDO
- Top Tips:
  - Don't Panic!
  - Consider any necessary third party redactions to notes
  - Open a separate file for any correspondence re the potential claim
  - MDO may ask for your initial comments
- Formal Letter of Claim (facts, breach, causation, C&P, quantum)
- Letter of Response

# Issue of Proceedings

---



- Limitation
- Writ of Summons:
  - Keep covering letter(s) – who was the Writ addressed to/when was it received?
  - Who is named on the Writ?
  - Prompt notification to MDOs of all involved practitioners (14 days for MOA)
  - KBD Master's Review of Unserved Writs
- Memorandum of Appearance

- **Statement of Claim**
  - Should detail, with reasonable precision, allegations of breach of duty, causation and losses
  - Should clearly identify which allegations relate to which Defendant
  - Your comments will be required on a line-by-line basis
  - Volunteer any additional relevant background information
- **Expert evidence obtained (breach and causation)**
- **Defence**
  - Substantive document setting out GP's position (admissions, denials, averments)
  - Based on GP's comments/instructions
  - Expert evidence relied upon (c.f dispute between member and expert)



# Pleadings continued...

- Discovery

*“all documents which are, or have been in their possession, custody or power relating to any matter in question between the parties”*

- Includes all documents:
  - GP notes/all correspondence
  - Have the entirety of the computerised notes been printed
  - Any Practice system notes - tasks/telephone notes
  - SAI reports
  - Partners’ minutes
  - Any complaints file/any correspondence with the Ombudsman
- Right to inspect
- Privileged documents
- Exchange of Expert Evidence/Meetings of experts

# Potential Outcomes

---



- Notice of Discontinuance/Judgment for Defendant
- Settlement/without admission/confidentiality
- Defend to trial

# Common claims in General Practice

---



1. Delayed referral/diagnosis (cancer, cardiac, DKA, meningitis/encephalitis, cauda equina and sepsis)
2. Referrals not appropriately prioritised/ 'information light'
3. Repeat prescriptions
4. Medication errors
5. Delayed / misdiagnosis of peripheral ischaemia / diabetes
6. Chronic disease management (lack of continuity of care)

# Learning Points

- Previous clinical entries/correspondence from secondary care (read them)
- Print view versus hard copy (what were you actually looking at?)
- History taking (factual disputes)
- Examinations/tests (cf remote consultations) (bloods/urine/x-ray/MRI)
- Be familiar with and apply 'red flag referral' criteria (referral letters)
- Record justifications for deviation from guidelines
- Record significant 'negative/normal' findings
- Practice systems are important – managing test results (read them)/'follow ups' (Covid)
- Keep up-to-date with medication alerts
- Maximise the use of medication reviews
- Give and record appropriate safety netting advice

# NHSR key recommendations (19/20)



- A digital GP 'track and trigger' risk assessment tool to identify deteriorating patients earlier alongside the promotion of existing safety netting tools
- 'Further development' of advice and guidance (A&G) services to improve 'communication and collaboration' between general practice and secondary care
- Protected learning time for GP practice teams
- Regulators to 'consider using' the Royal Pharmaceutical Society (RPS) competency framework to review prescribers and prescribing
- Research into 'why clinicians override adverse drug reaction system prompts and how this may be minimised'
- Appointing medication safety officers

# Concurrent investigations

---



- Northern Ireland Public Services Ombudsman
- General Medical Council
- Inquests
- SPPG investigations

- GMC Statistics\*\*
  - In 2021:
    - 9,074 fitness to practise enquiries were made in 2021;
    - there was an increase of 7% in complaints to the GMC (as compared to 2020);
    - a decrease, by 11%, of triages referred to investigation (as compared to 2020)
    - 86% of enquiries were closed at triage stage

*\*\*[Fitness to practise statistics and reports - GMC \(gmc-uk.org\)](https://www.gmc-uk.org)*

# Any questions?

---



# Thank you!





**We do more.  
Better.**