

Health needs root and branch change

With waiting lists rising exponentially, people's health further deteriorating and the annual cost of medical negligence cases growing, leading medical lawyer **Patrick Mullarkey**, partner and joint head of healthcare at O'Reilly Stewart Solicitors, examines what needs to be done to transform the health and care system in Northern Ireland



THE vast majority of people who come for treatment with the NHS receive care in a competent and professional manner, and healthcare professionals and the service is to be commended for that.

As a caring profession, so many staff across the system go over and beyond that expected of them to support patients and improve lives, as we have seen throughout the pandemic.

But the huge tide they are swimming against is overwhelming.

While Robin Swann's plan to address the immediate crisis is to be welcomed, it is a plan without a fund, as a one off let alone a recurrent one, and questions remain whether these huge resources would actually address the underlying structural failure which continue to threaten patient care.

The backdrop is, of course, that our health system has never been under the strain that it is today, exacerbated firstly by the prolonged collapse of power-sharing and the devastating circumstances of Covid.

We had seen the implications of the failings in the system playing out for some time with £32.8 million paid out in medical negligence claims in 2019/20 in and a total of £200 million in six years.

Lost in the commentary of these huge figures is the fact that behind every pound paid by way of compensation there is an injured patient or a bereaved next of kin, people like you or me, who have often suffered unimaginable loss by virtue of poor care within our health and care system.

Make no mistake, an award of money in damages to a brain damaged child, to pay for the intensive 24-hour care that he or she will require for a shortened life is far removed from the "lottery win" figures which make the headlines.

Tell that to the parents of the child, suffering life changing injury, who have shouldered the burden of that care, on a gratuitous basis, from birth. Or seek to persuade the parents of an 11-year-old boy who dies

on his return to the emergency department of a local hospital, having been misdiagnosed and inappropriately discharged on first presentation, that they have somehow "won".

I have dealt with many cases, of people from all ages and from all walks of life, like these in recent times but the question is what will it take to change these failings?

It has been recognised, repeatedly, that health services will deteriorate to the point of collapse if the status quo is maintained, with seven major reviews in the last 20 years all making the same point ("Systems not Structures" Rafael Bengoa, 2016, "Change or Collapse: Lessons from the drive to reform health and social care in Northern Ireland", Mark Dayan and Prof Deirdre Heenan).

And yet, here we are, with the worst waiting lists in the UK for planned care, patients missing planned surgery for cancers and other life threatening conditions.

According to Dayan and Heenan, writing in 2019, a person in Northern Ireland is at least 48 times as likely as a person in Wales to wait more than a year for care. This delay matters.

Patients do not remain in a state of "suspended animation" whilst languishing on a waiting list.

They deteriorate, their conditions become worse and in some cases they die.

The health service suffers from limited resources, rising and unmet demand, poor workforce planning, over-centralisation of command, short-termism and an unwillingness, politically, to rationalise or sacrifice services locally to create, and sustain, expert services nationally or indeed on an all-island basis.

What this means in practical terms for you and me as patients is delay in necessary care, overworked and inexperienced staff and short staffing.

The culture of openness of the medical professions and the health service managers has been the subject of regular review and inquiry.

Mr Justice O'Hara, in remarks made in his capacity as chairman of the Hyponatraemia Inquiry, reporting in 2018, noted that "It is time that



WAITING GAME: Someone in Northern Ireland is at least 48 times as likely as a person in Wales to wait more than a year for care

the medical profession and health service managers stopped putting their own reputations and interests first and put the public interest first ...".

Some three years after that report we have been told it may well be another four years before legislation enshrining a statutory duty of candour is passed by our Assembly. Even now, we have patient recall inquiries springing up in Belfast, Craigavon and Muckamore and we see evidence of the same badges of failure and poor care present in each case; alleged individual negligence and misconduct, poor governance, lack of oversight or accountability, lack of peer review and failures to audit or maintain standards.

Here's the important point; in all of those examples given, and in countless others I have acted in during the 28 years of my career, the admission of fault has not been offered, with some honourable and rare exceptions, with candour by the doctors or the health service.

Injured patients of their bereaved relatives sit before me, fresh from their loss, seeking, in order, an explanation of what has gone wrong, (because none has been forthcoming), an apology if what has happened should not, an assurance that their misfortune will not be visited on another poor family and then, and only then, compensation for the loss they have suffered. Any concession has been wrung from the

service through the persistence of the injured parties, through the law and through the advocacy of the representatives of those who have suffered loss.

True, some things have improved over the course of my practice. Trusts are now meant to carry out serious adverse incident investigations when something goes wrong. But ultimately in my experience people who have suffered loss go to the law because only then do they believe they will get a reasonable explanation and answer.

Nothing short of a root and branch reform of the system is needed to protect patients and future proof the health care system for the next generation.