

# Lynne McCafferty KC

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Lynne McCafferty KC has an international commercial practice.

She has particular expertise in the following areas:

- Construction & Engineering
- Energy
- International Arbitration
- Professional Negligence
- Technology & Telecoms

Lynne is noted for her advocacy skills. She has extensive advocacy experience in the Technology & Construction Court (TCC), international and domestic arbitrations, dispute adjudication boards, adjudication proceedings, and mediation. She is registered as an advocate in the Dubai International Financial Centre Courts (DIFC). She is particularly adept and highly experienced in cross-examining expert witnesses in a wide range of disciplines.

Most of Lynne's cases involve highly technical issues. She is known for the forensic technical understanding and rigorous attention to detail required for these heavy and complex cases. She has extensive experience of working with and leading large teams of solicitors, juniors, and experts.

## Construction & Engineering

Lynne has extensive experience of major construction litigation and arbitration across the globe. Her practice encompasses all types of construction and engineering disputes, from huge infrastructure projects to multi-million pound commercial and residential developments to high-profile PFI projects. Recent projects include museums, hospitals, and a state-of-the-art scientific facility.

Lynne has been instructed under a wide range of arbitration rules including ICC, LMAA, LCIA, DIFC, and DIAC. She has also been appointed as an arbitrator both by the ICC and on an ad hoc basis.

## Featured Construction & Engineering cases

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Instructed on the Grenfell Tower Inquiry for a building services engineering firm who was involved in the refurbishment of Grenfell Tower. This is the biggest, and one of the most important, public inquiries there has been in the UK with huge ramifications for the whole construction industry.

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Acting for the main contractor in a dispute relating to a £110m PFI contract to rebuild and refurbish 924 sheltered homes for the elderly across 26 sites in the North-East of England. The dispute concerns responsibility for remedying widespread defects in the properties' roofs, the costs of which will run to tens of millions of pounds.

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Acted for the contractor on a high-profile and extremely time-critical transport infrastructure project in the Middle East defending a \$40m ICC arbitration claim brought by a sub-contractor in relation to alleged design changes, delay, prolongation, and variations.

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Represented a façade subcontractor in an application in the DIFC Court for an injunction to compel the main contractor to withdraw demands for 21m dirhams made under a performance bond and an advance payment bond.

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Instructed on the Scottish Hospitals Inquiry, a huge public inquiry set up to investigate the construction of two major new hospitals where there have been a number of fatalities from rare infections. Lynne is representing the project manager who was engaged on the £840m project to design and construct the Queen Elizabeth University Hospital in Glasgow.

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Acting for the owner of a high-storey residential accommodation block in a £12m claim against the contractor arising out of its design and installation of the external cladding system.

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Acted for a main contractor in multi-party TCC proceedings concerning fire safety defects in the cladding of a mixed-use development in South London.

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Instructed in a DIFC-LCIA arbitration by an MEP sub-contractor in a claim against a major Middle Eastern contractor relating to the construction of the prestigious New York University in Abu Dhabi. This wide-ranging dispute worth 300m dirhams concerned substantial delays, hundreds of variations, and payment disputes.

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Instructed in an LCIA arbitration for a leading global contractor claiming for delay and variations worth over \$420m in connection with a \$840m contract to design and construct production facilities to process oil and gas from an oil field in the Middle East.

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Instructed by a world-renowned steelwork engineer on a DIAC arbitration worth 33m dirhams concerning wide-ranging disputes with its sub-contractor in relation to the steelworks for a high-profile iconic museum project in Abu Dhabi.

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Acted for a quasi-public body in a £10m arbitration claim against a contractor for the costs of replacement of a defective standing-seam aluminium roof on the UK's national synchrotron, a major scientific facility.

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Advised a leading engineering firm on a wide range of technical and legal disputes arising out of the design and construction of a major new hospital in Liverpool, including the insolvency of the main contractor, Carillion.

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Instructed by a specialist M&E contractor in multi-party TCC proceedings worth £30m arising out of the design and construction of a major national data centre facility.

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Acted for a major UK contractor in two linked multi-party TCC cases relating to the multi-million pound design and construction of a new acute hospital under a PFI project agreement. The disputes concerned multiple alleged defects in the M&E services installed in the new hospital.

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Acted for the employer in a multi-million pound TCC claim against a national contractor for defects in the design and construction of concrete slabs in the docking areas of several distribution centres.

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Acted for a local authority on wide-ranging disputes arising out of the construction of a major biological treatment plant by a specialist waste management company, which were played out in multiple adjudications and multi-party TCC proceedings.

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Instructed by a specialist piling contractor to defend an adjudication claim arising out of its design and installation of sheet piling during the construction of a high value residential property. The claim turned on evidence from geotechnical engineering experts about the geology and ground conditions at the site.

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Acted for Sainsbury's in a multi-party TCC dispute concerning a £14m claim for defects in the design and construction of a large retail distribution centre. This included a substantial claim for business disruption.

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Instructed by a global design services consultancy in a claim for unpaid fees of \$4m brought in ICC arbitration following termination of a design services agreement. The agreement was a turnkey contract under which the Main Contractor was engaged to design, build and maintain a new underground metro system (including related stations and viaducts) in Dubai. The Main Contractor counterclaimed for damages for professional negligence.

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Instructed by the EPC turnkey contractor on a high-profile international infrastructure contract under a FIDIC form of contract concerning works to construct an undersea railway tube crossing together with associated tunnels, additional stations, and an extension and upgrade of the existing railway and tube networks in Istanbul. Several disputes relating to applications for extensions of time were referred to the DAB.

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Lynne has also worked in the construction department of the Paris office of White & Case as part of the Inns of Court Paris Bar Law Exchange.

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## Energy

Lynne has considerable experience in litigation and arbitration relating to the oil & gas, renewable energy, and utilities industries. Her work in this specialist field includes solar photovoltaic plants, onshore wind farm projects, offshore and onshore oil and gas processing plants and pipelines, power stations, and biofuel processing plants.

### Featured Energy cases

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Representing the employer in a £30 million dispute about defects in the works on two linked projects to engineer, procure, and construct solar photovoltaic installations.

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Acting for the main contractor in UNCITRAL arbitration proceedings worth SAR 868 million (approx. £173 million) relating to a huge project to engineer, procure, and construct a tank farm and loading facilities at a major oil refinery and terminal in Saudi Arabia, which forms part of one of the largest gas power plants in the world.

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Acted for a specialist contractor in the renewable energy industry on a £35 million dispute arising out of the design and construction of HVDC Converter stations for the North Sea Link, which will be the world's longest undersea electricity transmission cable.

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Instructed by engineers to defend linked TCC claims worth £41m relating to alleged defective turbine foundations in

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several wind farms.

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Acted for a leading engineering firm specializing in the renewable energy industries in adjudications and related adjudication enforcement proceedings in the TCC in connection with several projects to construct Energy from Waste plants in the UK (Engie Fabricom UK Ltd v MW High Tech Projects UK Ltd [2019] EWHC 1876 (TCC); [2020] EWHC 1626 (TCC)).

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Instructed in an LCIA arbitration for a leading global contractor claiming for delay and variations worth over \$420m in connection with a \$840m contract to design and construct production facilities to process oil and gas from an oil field in the Middle East.

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Appointed as Adjudicator to decide a dispute arising under a £20m piping installation sub-contract for the design and construction of a thermal power station as part of a major waste management PFI project. The dispute comprised four separate claims involving certification of payment, alleged defective works, and complex contractual issues.

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Represented a European governmental agency in defending \$85m of claims in an ICC Arbitration by an EPC contractor engaged to build an oil pipeline (including pumping stations and intermediate pigging station).

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Instructed by a process design consultant to defend adjudication and TCC proceedings worth £18m in respect of alleged design defects in a biodiesel processing plant.

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Acted for the contractor in a \$600m ICC arbitration claim for variations to a contract for the design, fabrication and construction of an oil pipeline, pumping stations and associated communication system and oil marine terminal in Africa.

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Acted for the claimant in LCIA arbitration in a US\$30m claim under a contract for the onshore and offshore refurbishment and upgrading of a jack-up rig and the provision of a permanent production facility in a Qatari oilfield.

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## Professional Negligence

Lynne has a substantial professional negligence practice with particular focus on claims against construction professionals, especially structural engineers, geotechnical engineers, mechanical & electrical engineers, architects, quantity surveyors, and monitoring surveyors. She is also often instructed in disputes relating to the negligence of solicitors, barristers, and chartered surveyors.

She acts both for and against professionals and their insurers. She has considerable experience of advising professional indemnity insurers on coverage issues.

### Featured Professional Negligence cases

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#### Engineers:

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- Instructed on the Grenfell Tower Inquiry for a building services engineering firm who was involved in the refurbishment of Grenfell Tower. This is the biggest, and one of the most important, public inquiries there has been in the UK with huge ramifications for the whole construction industry.
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- Acted for a major fire engineering consultancy in multi-party TCC proceedings worth £25m relating to cladding on four residential and commercial buildings in the BBC's high-profile Media City development in Salford.
- Instructed by engineers to defend linked TCC claims worth £41m relating to alleged defective turbine foundations in several wind farms.
- Acted for engineers in relation to a £30m claim for alleged defects in the design and construction of a proprietary modular car park system constructed at many superstores.
- Advised a leading engineering provider in a dispute relating to a waste PFI contract with a local authority worth £400m.
- Instructed by a leading international engineering firm in a multi-party TCC claim concerning the design and construction of solicitors' offices in Manchester.
- Acted for structural engineers in a multi-million pound TCC claim by a building contractor in relation to the failure of underpinning works and damage to adjoining properties during the construction of a hotel and residential apartments.
- Acted for structural engineers in a high value TCC claim by an architect for defective design and supervision in relation to the redevelopment of Barnsley Civic Hall: *Allen Tod Architecture v Capita* [2016] BLR 592.
- Instructed by leading global geotechnical engineers in a multi-million pound TCC claim for contribution brought by civil engineers arising out of earlier multi-party litigation in the TCC.

#### Architects:

- Acted for a major property developer in a £6m TCC claim against its team of professional advisers arising out of the purchase and development of a prime Central London retail property.
- Acted for the architect in a high value multi-party TCC claim relating to major renovation works to a prestigious Grade II listed terrace at Lancaster Gate overlooking Hyde Park.
- Instructed by a global design services consultancy in a claim for unpaid fees of US\$4m brought in ICC arbitration following termination of a design services agreement. The agreement was a turnkey contract under which the Main Contractor was engaged to design, build and maintain a new underground metro system (including related stations and viaducts) in Dubai. The Main Contractor counterclaimed for damages for professional negligence.
- Defended Danish architects in a £4.5m TCC claim relating to the innovative design of the new Museum of Liverpool.

#### Quantity Surveyors:

- Acted for quantity surveyors / project managers in a TCC claim by high-net worth individuals relating to the multi-

million pound design and construction of a residential property: *Russell v Stone* [2019] EWHC 831 (TCC).

- Acted for a firm of quantity surveyors and claims consultants in a multi-million pound TCC claim brought by high-net worth individuals arising out of an unsuccessful arbitration against building contractors. This case raised novel issues about the duties owed by quantity surveyors acting as advocate in arbitration proceedings: *Wattret & Wattret v Thomas Sands Consulting Ltd* [2016] PNLR 15.
- Acted for quantity surveyors in a TCC claim in which the claimant superstore alleged that the construction costs of a major development had been substantially underestimated.

#### Monitoring Surveyors:

- Defended monitoring surveyors against a multi-million pound claim by a national bank arising out of several high-end residential developments.
- Acted for monitoring surveyors in a multi-party TCC dispute arising out of the development of a former public house into residential flats.
- Acted for a firm who provided both quantity surveying and monitoring surveying services on a residential development in defending a multi-million pound TCC claim.

#### Solicitors' Negligence:

- Acted for a major property developer in a TCC claim against professionals it engaged in connection with the purchase and multi-million pound development of a prime Central London retail property: namely, its solicitors, architect, quantity surveyor, and property consultant.
- Acted for solicitors in their defence to a claim in the QBD by a former client, a construction contractor, for the loss of a chance to bring a professional negligence claim against its former solicitors in relation to their conduct of an adjudication.
- Instructed by solicitors to defend a QBD claim arising out of their conduct of a major adjudication claim, and to pursue contribution proceedings against counsel.

## Technology & Telecoms

Lynne has extensive experience in Technology & Telecoms litigation and arbitration. Her clients range from major international corporations to government departments to specialist software developers and consultants. She acts for both employers and suppliers alike.

Lynne has particular experience of heavy large-scale disputes arising out of IT contracts, including major business systems, government contracts, and bespoke software projects.

## Featured Technology & Telecoms cases

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Acting for a major global IT consultancy, the biggest Microsoft Dynamics 365 specialist in Europe, in its defence of a multi-million pound counterclaim in the TCC by a customer alleging defects in its proprietary pre-configuration of Dynamics 365 for the professional services industry.

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Appointed by the ICC as sole arbitrator on a dispute under a telecoms distribution agreement.

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Acted for a facilities management company in a £10m claim against a specialist IT support services provider for substantial losses and reputational damage arising out of a ransom malware attack.

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Advising a software developer on a dispute under a licensing agreement for its proprietary e-commerce software product.

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Lynne is currently one of four silks appointed by Herbert Smith Freehills to the independent advisory panel tasked with assessing applications for compensation from postmasters affected by the defects in the Post Office's electronic point-of-sale IT system, Horizon, which led to false shortfalls in branch accounts. This was the UK's most widespread miscarriage of justice. The compensation scheme (known as the Historical Shortfall Scheme) was set up following the well-publicised class action brought in the TCC against the Post Office which resulted in several landmark IT decisions by Mr Justice Fraser (including [Alan Bates v Post Office Ltd \(Judgment No. 6\) \[2019\] EWHC 3408 \(QB\)](#)).

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Acted for a major public body in relation to a range of complex disputes (relating to delays, defects, inadequate functionality, and contractual issues) arising out of a suite of multi-million pound operationally critical IT services contracts.

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Instructed in a DIFC-LCIA arbitration by an MEP sub-contractor in a claim against a Middle Eastern contractor relating to the construction of the prestigious New York University in Abu Dhabi. This included a technically complex dispute worth 28 million dirhams about the supply of active and passive components for the IT and telecoms system for the facility.

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Advising a leading engineering firm on a wide range of technical and legal disputes arising out of the design and construction of a major new hospital. These included a multi-million pound dispute about whether the installation of an active mobile telephony enhancement system (MTE System), enabling 4G capability, was a variation to the parties' Electronic Low Voltage (ELV) Trade Contract.

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Acting for a leading IT supplier in its defence to a £48m claim by an NHS Trust arising out of a multi-million pound contract for the supply of desktop services and hardware.

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Advised a Data Provider who (due to a coding error) had accidentally provided a customer with unauthorised access to its entire quality-enhanced database of UK businesses. This was a potential breach of the Data Provider's licence agreement with the third party supplier of a Resale Database.

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Acted for an employer in its claim against an IT consultancy in relation to a failed project to provide a Microsoft Dynamics AX/CRM solution tailored to the employer's detailed requirements. The claim was for delay and failure to provide core functionality, with grave consequences for the employer's business and ability to compete in the market.

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Instructed as Junior Counsel for the Secretary of State for Health in relation to the NHS Connecting for Health project, multi-million pound arbitration disputes about the largest civil IT system in the world.

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Advised a Government department on its rights and remedies under a contract for the supply of a computerized central payment system worth £50m where the supplier was in severe delay.

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Advised a leading international IT services company in a dispute valued at £45m relating to alleged performance issues arising from a major project to design, build, integrate and install an IT system.

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Represented a leading UK IT services company in connection with an adjudication valued at over £100m as part of a large team of Counsel. The dispute related to a major implementation contract entered into under a PFI scheme.

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## Appointments

- Part II of the DIFC Courts' Register of Legal Practitioners
- Appointed to TECBAR's panel of accredited Adjudicators
- Secretary of TECBAR from 2011 to 2016
- Judicial Assistant to the Court of Appeal (Civil Division) in 1999

## Publications

- *Civil Appeals: Principle & Procedure* (Sweet & Maxwell) (co-author)
- Contributing author to the Practical Law Company's Adjudication service

## Education

- MA (Oxon) English – 1st Class
- Dip Law (City University) – Distinction

## Languages

- French (working knowledge)

## Recommendations

Lynne McCafferty KC is recommended as a leading silk for construction, professional negligence, and technology & telecoms law in Chambers & Partners, Chambers Global, Legal 500, Legal 500 EMEA, and Who's Who Legal.

Recent comments include:

- Lynne's preparation and cross-examination is meticulous, fierce, and incisive
- She has a quite wonderful technique of slowly, calmly, and precisely taking witnesses apart in cross-examination

- She is one of the best silks around
- She has fierce cross-examination skills and provides good commercial advice
- Lynne is rigorous, unpretentious, approachable, and tenacious
- A fiercely intelligent and competitive advocate
- She is extremely hard-working, reliable, delightfully user-friendly, clear-thinking, and concise as a drafter. She is also focused and ruthless in cross-examination
- A first-rate lawyer and an outstanding performer in court

## Accreditations

