

# PRIVATE EYE

SPECIAL REPORT PART 12



## THE LESSONS OF THE LUCY LETBY CASE

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# THE LUCY LETBY CASE: PART 12

## Legal challenge 1

ON 16 December, Lucy Letby's barrister Mark McDonald held a press conference to announce he is asking the court of appeal to review all the neonatal nurse's convictions after Dr Dewi Evans, chief medical witness for the prosecution, withdrew one method of murder for babies C, I and P after the trial. In a signed statement to Channel 5 dated 3 August 2024, Evans wrote: "None of the babies [who died at the Countess of Chester Hospital in 2015 and 2016] were killed as a direct result of the injection of air, or fluid and air deliberately injected into their stomachs."

However, jurors were told a very different story by prosecution barrister Nicholas Johnson. For example, in his summing-up on 21 June 2023, Johnson said: "When you put Baby C's case alongside the others, it's as plain as the nose on your face that Lucy Letby must have injected air down the nasogastric tube into Baby C's stomach. It was, after all, one of her favourite ways of killing..."

The "air in the stomach" murder theory has been ridiculed in neonatal circles (*Eyes passim*), and Letby was not even on duty on two occasions when it occurred. Evans gave clear descriptions of how stomach distension splinted the diaphragm and crushed the lungs in his testimony, but says he changed his mind that this could be fatal later in the trial, not after it, and so it is Johnson and the court of appeal who have made serious errors in attributing deaths to this method, not Dr Evans.

Either way, the appeal court will need to decide whether the verdicts on babies C, I and P are sound, and by extension, the other verdicts.

## Legal challenge 2

MCDONALD also said he is submitting two reports to the Criminal Cases Review Commission (CCRC) on the deaths of Baby O and Baby C, compiled by Dr Neil Aiton and Dr Svilena Dimitrova, two practising neonatal experts. Neither the authors nor their reports were available for public scrutiny at the press conference.

David Davis MP has meanwhile been granted a Commons debate this week on the Lucy Letby case, with the express intention of speeding up the CCRC, which can take a decade or more to refer a case back to the appeal court.

McDonald's submission said the experts worked pro bono and had full access to all the evidence, that their reports were the most detailed he had ever come across and concluded that the events leading up to the deaths were entirely explicable and neither death was due to intended harm by Letby or anyone else.

McDonald gave the report on Baby O to a third neonatologist, Dr Richard Taylor, who explained the findings – which he endorsed – to the press conference. He said Baby O was ventilated at inappropriately high pressure settings that pushed the liver down into the pelvis. The baby also developed abdominal distension and, to try to relieve this, a doctor inserted a needle into the abdomen on the right-hand side, when he should have used the left. He drew back blood in his syringe because the

needle – according to these experts – lacerated the liver, which led to bleeding, and the baby went into shock, confirmed by a blood test which showed the baby's haemoglobin level had halved. "They were unable to resuscitate the baby partly because they didn't realise what they'd done."

Taylor concluded: "I have to say, from a personal point of view, that if this had happened to me, I'd be unable to sleep at night, knowing that what I had done had led to the death of the baby. And now there is a nurse in jail convicted of murder."



## Silent Brearey

THE doctor who did the needle aspiration was not mentioned at the conference but is identifiable from the court transcripts as Dr Stephen Brearey, one of Letby's main accusers.

In his testimony, Brearey accepted that he drew back "a small amount of blood" but was confident the needle went "nowhere near the liver". It was not discussed in court that the ventilation pressures could have pushed the liver down into the pelvis, nor that the sudden drop in haemoglobin followed the aspiration. Brearey is understandably remaining silent, doubtless awaiting access to the full report.

The parents of Babies O and C should also be given full access to new expert reports on how their babies died, rather than hear third-party summaries at a press conference. And it is ludicrous it has taken nine and a half years after the death of Baby C, and eight and a half years after the death of Baby O, for these reports to have been compiled. Had they been done soon after the deaths, Letby might never have been charged with murder.

## Open justice?

IT IS not unusual for medical experts to draw widely different conclusions based on the same evidence. When the CCRC has finished with these reports (and others being compiled that challenge the insulin poisonings), they should be placed in the public domain for other experts to scrutinise, alongside the reports of the prosecution experts. A hallmark of good science, and good justice, is that they welcome and withstand proper scrutiny. Any sound verdict – and the science, statistics and circumstances that lead to the jury's decision – should stand up to challenge and be made stronger as a result.

Alas, the judicial process makes such challenge very hard. Court transcripts are prohibitively expensive and the case notes and reports on which arguments are forged remain secret to journalists, and sometimes even to the jury. The science is the science, but an adversarial process allows aspects to be cherry-picked or omitted so the jury may never hear the complete picture.

The prosecution generally has more resources to pay for more experts than the defence, and these "independent" experts have a strong pecuniary incentive to remain useful to their police and court paymasters. But the defence doesn't have to disclose evidence or its own expert reports. Indeed, it can gamble on fielding

no expert witnesses at all, fail catastrophically and then lose all its appeals because the correct legal processes were followed, even if the science was badly wrong.

## Thirlwall update

ACCORDING to the latest views of Dr Evans, Letby murdered all seven babies by injecting sufficient air into a venous line to cause sudden death. All other harms were non-fatal. However, the Thirlwall inquiry has released an email of 14 February 2017 from Countess of Chester medical director Ian Harvey which states: "The pathologists at Alder Hey have assured me that a significant air embolus would be detected at PM." And yet, of the six babies who had meticulous post-mortem examinations, not a single significant air embolism was found. Why not?

Meanwhile, Jeremy Hunt MP will give evidence to the inquiry. He was health secretary at the time, with a particular interest in patient safety, and can perhaps explain how a unit with sewage leaks and manifestly unsafe staffing levels was allowed to continue providing level 2 neonatal care on his watch, and why there wasn't an immediate downgrading of services pending an independent investigation after the rise in deaths.

## Running for cover

A STATISTICAL paper questioning Letby's guilt has been refused publication in the journal *Medicine, Science and the Law* because – according to the main reviewer – "the suffering of the parents of the victims needs to be held firmly in mind".

A miscarriage of justice would indeed cause more suffering for parents, and cause catastrophic damage to the reputations of the police, legal and medical professions. But if NHS scandals have taught us anything, it is that cover-ups are the greatest catastrophe of all.



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