PRIVATE EYE

SPECIAL REPORT PARTS 14 & 15

THE LESSONS OF THE LUCY LETBY CASE

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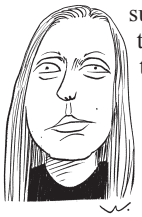
THE LUCY LETBY CASE: PARTS 14 & 15

PART 14

Taunting the law

CONVICTED serial killers very rarely get appeals, and certainly not quickly. So Lucy Letby's barrister Mark McDonald is in uncharted territory. Instead of quietly submitting his application to the Criminal Cases Review Commission (CCRC), he has chosen to lay out his evidence in press conferences first.

This tactic was doubtless triggered by police threats of further charges, which would silence public debate again; and it puts pressure on the CCRC and the court of appeal (CoA). It also risks his experts saying something off-message under media scrutiny that may later be used to discredit them. He also has to be careful not to breach data protection laws in sharing information.



At a press conference on 16 December, McDonald said he was appealing directly to the CoA on the grounds that prosecution expert Dr Dewi Evans was unreliable, having changed his mind about a cause of death Letby was convicted of using on four babies (*Eyes passim*). Meticulous reports on the deaths of babies C and O compiled by UK neonatologists Dr Neil Aiton and Dr Svilena Dimitrova found no evidence of deliberate harm by anyone and explained the deaths in terms of poor medical management. Similar reports have since been compiled on Baby P (murder) and Baby F (attempted murder) and again, no evidence of deliberate harm was found, with plausible alternatives proposed.

McDonald has now asked Sir David Davis MP to host another press conference on 4 February. Professor Shoo Lee will explain how his research was misused in the original trial (see last *Eye*). In addition, McDonald asked Lee to convene a panel of 14 international neonatal experts, unencumbered with the baggage of prior opinion on the trial, to review all 17 cases. Lee agreed provided the findings would be made public, whatever they were. And now they are.

Finally, a column in *UnHerd* by the website's investigations editor David Rose has apparently confirmed what statisticians have been warning about. Rose had access to detailed police notes from a two-day meeting with Evans in 2017, which shows that multiple "suspicious events" were identified by Evans, but ten that didn't involve Letby were disregarded. So the claim that "Letby was always on duty" when something suspicious happened was only true because the prosecution made it so. They painted a target after firing the arrows. None of this is any use to Letby until McDonald submits it to the CCRC, and it is subject to proper scrutiny.

PART 15

The end game?

MD's view when I started investigating the trial of Lucy Letby 18 months ago was straightforward. Nurses who murder babies do exist, but they are very rare. Babies who die from substandard care in the NHS are far more common – perhaps 1,000 a year (*Eyes passim*). Long before Letby was accused of murder, there needed to be a thorough expert review to ensure what happened at the Countess of Chester hospital wasn't another scandal of substandard NHS care. This didn't happen before Letby's trial, which in MD's view was criminally negligent.

There was a superficial review from the Royal College of Paediatrics and Child Health (RCPCH) and a brief external review by Dr Jane Hawdon which found no evidence of deliberate harm, and plenty of evidence of substandard care. But this was not enough to put the consultants and, later, police off the scent of murder.

Neither was the fact that none of the six post-mortem examinations performed by highly experienced paediatric pathologists raised any concerns of deliberate harm. What was needed was independent experts to be given access to all the records and examine cases in meticulous detail. This has finally happened, twice, thanks to Letby's barrister Mark McDonald and 16 experts from the UK and abroad. They agreed to work pro bono on condition their findings would be made public whether they favoured Letby or not. The reviews form part of the Criminal Cases Review Commission (CCRC) application and their findings were made public – as McDonald promised – at two incendiary press conferences which must have been deeply distressing for the parents.

Why two reviews?

MCDONALD needed to find experts who would trump those provided by the prosecution. In the UK he instructed two Level 3 neonatologists, Neil Aiton and Svilena Dimitrova, who have far more current and relevant NHS neonatal experience than the prosecution experts. They have produced detailed reports into four cases, clearly explaining the deaths and collapses with no evidence of deliberate harm and plenty of evidence of clinical errors.

However, both had expressed prior opinions on the case, as co-signatories to a letter to the Thirlwall inquiry (*Eyes passim*), and the appeal court might argue they are not truly independent in their analysis (although they have agreed to have their reports fully scrutinised).

To counter any accusation of UK bias, McDonald asked the Canadian academic paediatrician Dr Shoo Lee to convene a "dream team" of 14 of the world's top neonatology experts who had very little, if any, prior exposure to the case but huge experience and impeccable academic records. They would review the records and reports on all 17 cases Letby was originally charged on.

Lee clearly had skin in the game, having unsuccessfully given evidence to Letby's appeal after his research was misused (*Eyes passim*), as did the UK expert Professor Neena Modi, who was chair of the RCPCH when it sent an underpowered review team to the Chester hospital. But all the other experts were looking at the evidence fresh. Two experts were assigned to each case and if they did not agree, a third opinion was sought until all agreed to sign off the reports.

Summary findings

THE panel found numerous problems in medical care related to the 17 cases, including:

- Incomplete medical histories.
- A failure to consider obstetric history.
- Disregard for warnings about infectious bacterial colonisation.
- Misdiagnosis of diseases.
- Caring for patients who were beyond the unit's designated level of care.
- Unsafe delays in diagnosis and treatment of acutely ill patients.
- Poor resuscitation and intubation skills.
- Poor supervision of junior doctors in procedures like intubation.
- Poor skills in basic medical procedures like insertion of chest tubes.
- Lack of understanding about respiratory physiology and basics of mechanical ventilation.
- Poor management of common neonatal conditions like hypoglycaemia.
- Lack of knowledge about commonly used equipment in the neonatal intensive care unit eg: the Neopuff resuscitator; and the capnograph which measures respiratory health.
- Failure to protect at risk patients (eg with haemophilia) from trauma during intubation.
- Lack of teamwork and trust between health professions.

Further findings

THE panel also identified a raft of serious problems from witness statements. There were too few staff, they found, and not enough of them were appropriately trained, even for assigned nursing roles. Staff faced an overload of work and it was difficult to find a doctor when the need arose.

The unit, meanwhile, had poor plumbing and drainage; and despite intensive cleaning there was infection from *Stenotrophomonas maltophilia*, an antibiotic-resistant bacteria. Without proper space for sterile preparation, IV drugs were prepared in a corridor.

Some infants were at such high risk they should have been born and cared for at other, higher-level units; there were delays in transferring them when the need arose.

In conclusion...

THE international experts came to the same conclusions as the UK ones: there was no medical evidence to support malfeasance causing death or injury in any of the 17 cases

in Letby's trial; the deaths or injury of the affected infants were due to natural causes or errors in medical care.

Case discussions

AT THE press conference hosted by David Davis MP on 4 February, Dr Lee summarised seven of the 17 cases and explained – very clearly – why the deaths and collapses happened. The "insulin poisoning" evidence was strongly challenged, with more plausible explanations for the low blood sugars and test results. This coincided with a 100-page report, co-authored by insulin expert Professor Geoff Chase, which concludes that the deliberate insulin poisoning convictions have "no scientific justification whatsoever."

The fallout

THE press conferences were as one-sided as Letby's trial, only this time there were no experts speaking for the prosecution. The case was made clearly that Letby is the victim of a major miscarriage of justice.

Demolishing the opinions of prosecution experts and the reputation of the Chester consultants, the wider NHS and British legal system in a press conference is not the same as doing so in court. But experts of far higher standing both in the UK and abroad have independently concluded that there is no clinical or forensic evidence of murder or attempted murder in any of the 17 cases Letby was charged with, and there is ample evidence of substandard care leading to deaths which may have been avoidable.

In response to a question from MD, Dr Lee said that the standards of care were so awful that had the Countess of Chester neonatal unit been in Canada, "it would have been closed down".

Non-medical evidence

LETBY did leave handover notes and counselling notes in her bedroom, described by the prosecution as "trophies and confessions", and she did do internet searches on the families of babies she had been involved with, some of whom died. This was enough to convince the jury of intent to murder, although neonatal nurses have told MD they often take handover notes home by mistake and do Facebook searches to check up on families they have cared for, send condolence cards and go to funerals and christenings. Most have now stopped, however, to avoid suspicion.

MD's verdict

THE CCRC has a mountain of detailed reports to wade through and although they reach the same broad conclusions, there are differences in interpretation in some of the collapses and deaths from different experts, which is entirely predictable but may be viewed as inconsistency.

The press attention has put pressure on the CCRC to act swiftly; but the embarrassment of such a catastrophic miscarriage would be so great to the legal establishment, the pressure may also be on it to slow the process down. The current Thirlwall inquiry into what went on at the Countess of Chester looks even more ill-advised and must surely be suspended until the CCRC reaches a view.

The real tragedy is that all of this could probably have been prevented. Had any of these experts given evidence to the trial, it would likely have reached a different conclusion. Had they reported on the collapses and deaths as they happened, Letby would likely never have been implicated. Had the NHS had the safe staffing levels MD has been campaigning for since 2001, the babies may all have received better care and many might be alive today. The Countess of Chester was not unusual in the UK for its poor clinical outcomes. What made it so unusual is that it blamed them on a murdering nurse.

If Letby is a genius murderer, she is matched only by the genius of the long-retired paediatrician Dr Dewi Evans in spotting her murder methods when no one else could. Alternatively, and far more plausibly, neither of them is a genius and this is just another NHS unit unable to cope safely with the complexity of its caseload, instead finding someone to blame. On a brighter note, there is some truly excellent neonatal care in the NHS. Sadly, it's potluck whether you get it. Meanwhile, the police and CPS could still press further charges. They will face a long line of angry experts if they do.

These report originally featured in Private Eye issue 1642 and 1643.

To read parts 1-13 please visit **www.private-eye.co.uk/specialreports**