

# PRIVATE EYE

SPECIAL REPORT PART 3

## THE LESSONS OF THE LUCY LETBY CASE

DR PHIL HAMMOND (MD)  
ON THE ROLE OF EXPERTS



# THE LUCY LETBY CASE: PART 3

## MD ON THE ROLE OF EXPERTS

### Six nil?

ON PAPER, the trial of Lucy Letby looks fair and thorough. It was one of the longest murder trials in English legal history, based on a police investigation (Operation Hummingbird) that scrutinised more than half a million medical documents and spoke to more than 2,000 people. And yet the fact the prosecution fielded six expert witnesses and the defence fielded none led to a one-sided interpretation of the evidence.

The *Times* has completed the sweep of UK newspapers questioning the evidence against Letby, and Channel 4 and *Panorama* are following Channel 5's documentary lead. Along with doubts as to how expert some of the prosecution experts were, there was poor presentation of the forensic science, clinical evidence and statistics. How could such a situation arise?

### Hall's letter

PROFESSOR Mike Hall, an unused neonatal expert for Letby, has publicly stated he did not think she had a fair trial. This is largely because his views that the babies were sicker than the prosecution portrayed and more likely to have deteriorated or died from natural causes was never heard by the jury (*Eyes passim*).

In addition, he has written to the *British Medical Journal* to raise concerns about "the suitability of the two prosecution neonatal expert witnesses to interpret for the court neonatal practice as it was in 2015-2016... One of the experts had retired from clinical practice in neonatal intensive care in 2007 and the other in 2009 – that is 15 years and 13 years respectively before the start of the trial.

"In all, five judges agreed with each other that the two expert witnesses were suitably qualified to give evidence and that it was for the jury to assess the validity of their evidence. But, first, were the judges qualified to make this decision? Second, as no medical expert witnesses were called for the defence, who might have challenged the evidence of the prosecution expert witnesses, how could the jury be expected to assess the validity of the prosecution medical evidence, in the absence of any peer comparators?"

Prof Hall is himself a retired neonatologist and may well be arguing himself out of a job. But how can courts get the best, currently practising experts?

### Law Commission report

IN 2011, the Law Commission published an excellent report, "Expert Evidence in Criminal Proceedings in England and Wales". Among the problems it identified, "too much expert opinion evidence is admitted without adequate scrutiny because no clear test is being applied to determine whether the evidence is sufficiently reliable to be admitted". Secondly, "in the absence of a clear legal test to ensure the reliability of expert evidence, advocates do not always

cross-examine experts effectively to reveal potential flaws in the experts' methodology, data and reasoning". Finally, "juries may therefore be reaching conclusions on the basis of unreliable evidence. This conclusion is confirmed by a number of miscarriages of justice in recent years."

The report recommended:

- A new admissibility test for expert evidence;
- That expert opinion evidence would not be admitted unless it was adjudged to be sufficiently reliable;
- New guidance for judges for applying the test, setting out the key reasons why an expert's opinion might be unreliable;
- A proper framework in criminal proceedings for screening expert evidence at the admissibility stage.

The Ministry of Justice responded on 21 November 2013, indicating it did not intend to act on the majority of the recommendations.

### Practical obstacles

A FURTHER barrier to getting the best experts for criminal trials is that it is a huge time commitment so tends to attract experts who have retired. It is also harder to get experts to act in "baby killer" cases, where both sides can attract unpleasant media and social media attention; there have been disastrous miscarriages of justice in the past; and inherent uncertainties and personal biases mean it is not uncommon for two experts of equal status to argue the opposite based on the same evidence, which is confusing for the judge, jury and press.

In addition, going up against the police can destroy your life and career, as paediatric brain specialist Waney Squier found out when she questioned the evidence around shaken baby syndrome (*Eyes passim*). Whether Letby's barrister Ben Myers couldn't find enough experts to match the prosecution's six, or decided not to try, is not known. He certainly had offers of help from statistician Richard Gill and scientist Sarrita Adams, who were the first to raise detailed concerns about the case. And plenty of experts are speaking up now the trials and appeals are over. Where were they beforehand? Most were silenced by draconian reporting restrictions which censored any questioning of the prosecution evidence between the first and second trials.

### Experts in the dock

A FEW expert witnesses have argued to MD that it doesn't matter if only one side fields experts, so long as they truly are experts in the areas in question, as they are duty-bound to be independent and interpret the evidence on behalf of the court, not who is paying them.

However, most experts recognise the biases in the system, as outlined by one of the

UK's leading forensic psychiatry expert witnesses: "One requirement of experts is that they are supposed to include, in their opinion, the range of possible opinions. They should not be 'arguing' anything but if they do fall on one side of a fence, they should explain why, but also include what is on the other side. It's a confirmation bias point, but a lot of people don't even glance over the fence. Again, if you were to ask the lawyers, they would be a bit reluctant for their expert to do this too much. I've certainly been encouraged not to give the other side of the argument."

Which is precisely why Letby needed experts on her side. So where was Prof Hall?

### Defence tactics

ON 27 April 2023, Letby's barrister tried to have her case thrown out at half-time, filing a "no case to answer" submission, after he tried to tear the prosecution experts apart on the stand. The full ruling is a public document available on lawyer David Allen Green's Empty City blog.

Myers had argued there was no case to answer because of the paucity of evidence and because some of the modes of murder were so unusual that no one could reliably be called an expert on them, and certainly not the two retired paediatricians for the prosecution. Judge James Goss considered and rejected this argument, but having argued there were no experts in this area, Myers may have been reluctant to put up his own retired expert, Prof Hall.

But however clever your barrister's questions, none of what he or she says is evidence. The only evidence you have is what comes out of experts' mouths. And if you have no experts, you have no expert evidence on, say, more plausible causes of death or whether the prosecution evidence stacks up.

### Another expert opinion

I SENT my most senior practising neonatal expert the half-time ruling for her opinion. She responded: "The defence tries to argue that the evidence of air embolism is inadmissible. But their argument is incomplete. What the defence should have done was first explain why a conclusive diagnosis of air embolism *ante-mortem* is extremely difficult (*ergo* no one – not even extremely experienced neonatologists – would be able to claim sufficient 'expertise'); second, why, once a diagnosis of air embolism is made (which as the literature leads us to expect is usually *post-mortem*), the next consideration is the question of the cause (the literature is clear that vigorous cardiopulmonary resuscitation, high-pressure ventilation, poor intravascular line management, and deliberate injection of air are all possibilities); then, third, point out that these babies all had vigorous cardiopulmonary resuscitation and high-pressure ventilation, AND there was evidence of a relatively inexperienced staff, understaffing and a somewhat chaotic unit that had had innumerable instances of shortcomings in cover, equipment, infrastructure pointed out over a considerable



period of time (ie a plausible backdrop to poor line management) – all of which indicates that deliberate injection is the least likely explanation. And the final and to my mind crucially important point in what should have been a logical sequenced argument is that plausible alternative explanations existed for the deaths/collapses of these babies.”

### Screen test

IN MD's view, the Law Commission's 2011 recommendations were sensible and should have been implemented. Had the statistical, forensic science and clinical evidence been screened beforehand by a team of the best available experts, the Crown Prosecution Service might have concluded that it would be impossible to prove the case beyond reasonable doubt. And if it took the case to court, this report containing all aspects of the evidence would be available to both judge and jury.

As it is, we have the unedifying mess of experts forced into silence until restrictions were lifted who are fulfilling their professional duty to raise concerns about potential errors, and the small matter of the data expert misreading the swipe card data for the Chester neonatal unit, meaning the spreadsheet used to convict Letby might not be accurate and she might not have been alone during one or more of the incidents (although the error was admitted in court).

Other errors MD has spotted include the original reporting restrictions order naming one of the babies, and a version of the “half-time” strike-out ruling released containing the names of all the babies.

But the biggest error of all was surely not to screen the expert evidence prior to trial. MD will attempt this in a future column, with contributions from prosecution expert Dr Dewi Evans and one of the Chester paediatricians. Both these sources still believe Letby is guilty beyond reasonable doubt, and I have put their evidence and opinions out for review by other experts in the field.



*This report originally featured in Private Eye issue 1631.*

To read parts 1 and 2 please visit [www.private-eye.co.uk/specialreports](http://www.private-eye.co.uk/specialreports)

**YOU'VE READ THE REPORT,  
NOW LISTEN TO THE PODCAST!**



**PAGE 94**

### Ep.118 BYE-BIDEN

The team discuss the news from across the pond, plus Labour's record-breakingly short honeymoon; and MD, AKA Phil Hammond, reveals the uncertainties of the Lucy Letby case.

Streaming on [private-eye.co.uk](http://private-eye.co.uk) and your podcast provider NOW!

# DON'T MISS OUT

## Subscribe today

# PRIVATE EYE

[www.subsonline.co.uk](http://www.subsonline.co.uk)

01858 438 850