PRIVATE EYE

SPECIAL REPORT PART 34 & 35

THE LESSONS OF THE LUCY LETBY CASE

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THE LUCY LETBY CASE: PARTS 34 & 35

PART 34

Waiting for the CCRC

WHY IS the Criminal Cases Review Commission (CCRC) taking so long to decide whether to refer Lucy Letby's conviction back to the appeal court? One clue came from an unusual public statement by chair Dame Vera Baird in mid-February. Baird stated that the CCRC had requested a waiver of legal privilege from Letby on 13 February last year "to allow access to defence files", and this was only received on 11 December.

In MD's view, Letby should have waived privilege when asked. The CCRC clearly needed the waiver to understand why the defence called no expert witnesses to the stand, although it seems likely this is because the defence team, led by barrister Benjamin Myers, could not find any experts prepared to argue against the insulin poisonings (*Eyes passim*), which were pivotal to the trial.

In contrast, Letby's new barrister, Mark McDonald, has found multiple experts prepared to argue against this, and all the other convictions, but they have only been tested in press conferences, podcasts and documentaries, not the appeal court. In a case as circumstantial as this, finding the right experts is as important as finding the right barrister. And then you have to put them on the stand.

Why the delay?

LETBY's delayed waiver may be because McDonald is uneasy about opening up the possibility of an inadequate defence argument against a barrister as formidable as Myers. The waiver eventually came six weeks before the Crown Prosecution Service determined that not one of the nine further cases against Letby "met the evidential standard". Given that the CCRC has a duty to tell the CPS if it receives information that may help a future prosecution, it seems no such information was uncovered by the waiver.

Baird confirmed that "a review of Ms Letby's convictions is under way… to find, investigate and if appropriate, refer potential miscarriages of justice to the appellate courts when new evidence or new argument means there is a real possibility that a conviction will not be upheld, or a sentence reduced". A decision must happen before the Thirlwall Inquiry reports, and the coroner's inquest into babies' deaths happen, to avoid the expense and continuing harm to parents of having to repeat these processes should she be granted an appeal, and win. And that depends on reversing the insulin argument.

Insulin is key

CHESHIRE Constabulary describe the insulin cases as "the smoking gun", which doubtless persuaded the CPS to press charges. Several experts testified that the blood results could only mean two babies had been given insulin when they didn't need it, and prosecution barrister Nicholas Johnson told the jury in his summing-up: "[Letby's] ignorance of C-peptide and the ratio between it and naturally produced insulin led her to think that she could get away with poisoning [Baby L] and [Baby F]. What she didn't know was that the ratio between C-peptide and insulin leaves a biochemical footprint or fingerprint, which proves foul play."

Unsurprisingly, these were the convictions the jury reached first and unanimously; they were then instructed by Judge Goss that they could use that knowledge to help determine other verdicts. If the CCRC is to be convinced that Letby stands a real possibility of winning at appeal, it needs to be convinced that the prosecution insulin arguments are not sound.

Could the tests be wrong?

A HIGH insulin and low C-peptide level certainly suggests exogenous insulin has been given, but doesn't prove it beyond reasonable doubt, and certainly not in a single, unrepeated and unverified biochemical test sample in a septic neonate where multiple factors are widely described in the literature to lead to a falsely elevated insulin result. This is precisely why the lab that processed the sample said this test could not be relied upon to measure exogenous insulin and recommended definitive testing – which never happened.

Most tellingly, when the consultant treating Baby F at the time was asked by the BBC why he hadn't immediately spotted the smoking gun of definite insulin poisoning from the blood results of Baby F, he said: "I did consider that insulin could have been delivered deliberately but this seemed absurd and ridiculously unlikely, so the tests being wrong seemed the only possible explanation… It's relatively common for samples to give inaccurate results."

However, when his fellow consultant Dr Stephen Brearey and chief expert witness Dr Dewi Evans viewed the same results months later, they concluded "that baby has been poisoned". When it was pointed out that Letby wasn't always present for the poisonings, they – and fellow experts Dr Sandie Bohin and Professor Peter Hindmarsh – concluded Letby must have spiked multiple feeding bags with insulin to achieve this in her absence. This did not explain why only one baby at a time was affected and there was no external evidence of poisoning (no insulin missing, nor proof of contaminated feed bags).

CCRC: eight reports…

THE *Eye* has been sent seven of the expert reports on one of the insulin babies (F). Five are from the paid prosecution experts (three from Evans, one from Bohin, one from Hindmarsh), one is from a paid defence expert not called to the stand (Dr Mike Hall), and one is from three defence experts working *pro bono* to assist Letby's application to the CCRC (Dr Svilena Dimitrova, Professor Alan Wayne Jones and Dr Adel Ismail). In addition, the *Eye* has a combined report of babies F and L from seven defence experts (Wayne Jones, Ismail, Dr Neil Aiton, Professor Matthew Johll, Professor Charles Stanley, Dr Richard Taylor and Dr Hilde Wilkinson-Herbots).

All the prosecution experts argue that a single "insulin/C-peptide" blood test is proof that Baby F was given insulin, and Hall says it "suggests" Baby F had insulin injected into the blood. Dimitrova, Wayne Jones and Ismail conclude the opposite. "There were very clear reasons why Baby F was hypoglycaemic, very clear reasons as to why the hypoglycaemia resolved when it did, and there is no evidence that exogenous insulin administration ever occurred. In turn, there is plentiful evidence of poor medical and nursing care and of misinterpretation of the medical and scientific evidence available by the expert witnesses."

The combined report of seven experts concludes: "Both babies had good clinical reasons for developing hypoglycaemia and neither developed any neurological signs

suggesting severe hypoglycaemia. It is not necessary to postulate the administration of exogenous insulin by way of explanation."

So who's right? The prosecution reports are paltry affairs ranging from 2-15 pages. The new defence reports are 60 pages and 85 pages, extensively cross-referenced to the clinical records and the published literature, including new research evidence that has emerged since the trial. Length doesn't necessarily imply quality, but having read all the reports, I know which ones I believe.

…and a compromised expert

THE CCRC is also aware that during the trial Professor Hindmarsh, whose evidence was central to securing the insulin convictions, had the most severe sanctions placed on him by the General Medical Council (GMC) short of suspension, having had serious concerns raised about his clinical practice by Great Ormond Street Hospital and University College London Hospitals NHS Trust on 15 November 2022.

Initially, Hindmarsh was ordered only to practise under supervision at UCL, but the GMC allowed him to continue his expert witness work in January 2023 provided all relevant authorities were made aware he was working under restrictions. The police, prosecution, defence and judge were certainly aware, but jury members were never told, so they could not factor this in when deciding what weight to give to his evidence, as they had been allowed to do after concerns were raised about fellow expert Dewi Evans.

The new defence experts allege Hindmarsh, Evans and other experts made serious errors in their evidence, but these have not been tested in court. Now they must be, and in a timely manner.

PART 35

Hindmarsh – who knew?

CHESHIRE police and the Crown Prosecution Service have told the Guardian they did not know that Professor Peter Hindmarsh – the expert whose evidence was instrumental in securing the insulin poisoning convictions against Lucy Letby – was subject to a formal investigation by University College London Hospitals NHS Trust (UCLH) before his first appearance as a witness on 25 November 2022. They were also unaware that Great Ormond Street Hospital (GOSH) had terminated his contract in July 2022.

The investigation was into multiple wide-ranging, serious concerns, including allegations that Hindmarsh had harmed patients. Under the expert witness rules, Hindmarsh was required to disclose anything "that might reasonably be thought capable of undermining the expert's opinion or detract from the credibility or impartiality of the expert". Hindmarsh chose not to do this, and Cheshire police did not do any due diligence on him.

UCLH and GOSH decided the concerns about Hindmarsh were so serious they submitted a formal referral to the General Medical Council to investigate on 15 November 2022, which was swiftly promoted to a GMC investigation on 25 November 2022 – the very day Hindmarsh first gave evidence. On 20 December 2022, the Medical Practitioners Tribunal Service (MPTS, part of the GMC although operationally independent from it) held an interim orders tribunal to determine what restrictions should be placed on Hindmarsh given the severity of the allegations. They determined that he could only work at UCLH under supervision.

Hindmarsh finally told the police and panic set in, for fear that they would lose their star insulin witness before he had completed his testimony (which, readers will recall, has since been strongly challenged by other experts).

Hindmarsh asked for an early interim orders review on 23 January 2023 and received clarification from the MPTS that he could still work as an expert witness but "he must notify any instructing organisation when acting or accepting instructions as an expert witness as to this and any ongoing GMC investigation". This seemed like a very lenient decision, given that his other restrictions remained in place and the MPTS believed he may have posed a significant risk to patients.

Hindmarsh carried on giving evidence and was later allowed to erase himself from the medical register so the GMC investigation was never completed, although it clearly would have been in the public (and Letby's) interest for it to have been. Most astonishingly, the jury was never told about any of Hindmarsh's risks, restrictions, investigations or the termination of his GOSH contract so they could judge what weight to give to his evidence. And had Hindmarsh declared the investigation into his practice at the outset and not during the trial, he surely would not have been selected as an expert.

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