PRIVATE EYE

SPECIAL REPORT PART 4

THE LESSONS OF THE LUCY LETBY CASE

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ON THE TACTICS FOR APPEAL

THE LUCY LETBY CASE: PART 4

MD ON THE TACTICS FOR APPEAL

Legal change

LUCY LETBY has instructed a new barrister, Mark McDonald, to draft her application to the Criminal Cases Review Commission (CCRC). McDonald has told MD his first task will be to conduct a review of the scientific and clinical evidence using the best available named experts, and publish it.

If it draws very different scientific conclusions from those of Dr Dewi Evans, the lead prosecution expert, the CCRC will be under pressure to refer the case back to the appeal court.

Meanwhile, her original barrister, Benjamin Myers KC, will oversee her current appeal.

Baby K appeal

LETBY was retried on the attempted murder of Baby K and was found guilty on 2 July of deliberately dislodging her endotracheal (breathing) tube (ET). She had been caught standing by the cot doing nothing by consultant paediatrician Dr Ravi Jayaram.

A plausible alternative explanation, according to experts who have seen the records, is that there was "accidental dislodgement of the ET possibly compounded by incorrect positioning and/or inadequate securing". In other cases, there was evidence of doctors having problems with intubation, selecting the wrong-sized tubes, having to repeat the process, etc. Doctors on the unit had been severely criticised at inquest following the death of baby Noah Robinson, after his breathing tube was wrongly placed by a doctor into the oesophagus. An inquest found the error wasn't picked up because doctors ignored five warning signs from x-rays and other equipment.

So the unit had previous for poor intubation. As for Letby standing by and "doing nothing", many neonatal nurses and doctors have said that the first thing you do when a baby desaturates is to observe to see if it corrects itself (it often does). Finally, errors in the swipe card data used by the police now suggest Letby might not have been on her own when she deliberately dislodged the tube, allegedly three times. None of this mattered, because the judge instructed the jury they could take into account that Letby had already murdered seven babies and attempted to murder six more before they decided on the seventh. This request for an appeal is likely to fail, as others have.

A new narrative

TO HAVE any chance of success, McDonald must offer the CCRC an alternative narrative to deliberate harm. He has two choices. Statisticians argue that the increases in death and deterioration of the sort seen in Chester happen by random fluctuation in neonatal units across the UK, that there was never anything abnormal about what happened on Letby's unit, and that the police should never have been called in. Very experienced pathologists performing coroners' post-mortem examinations on six of the babies failed to detect any signs of deliberate harm. It was all bad luck.

Statisticians also argue that because these variations are so common, you could call the police into many neonatal units and – using the same methodology – find a nurse who was present at many of the deaths and charge him or her with murder. This is one reason the Letby case is putting nurses off a career in neonatal care.

The alternative narrative is to agree with the prosecution that you need to look at the modes of death as well, and that it is unusual to have so many *failed resuscitations* on a neonatal unit in such a short space of time. One side argues that it was murder; but given the damning service review from the Royal College of Paediatrics and Child Health (RCPCH), which the jury never saw, McDonald could argue that the unit simply wasn't up to the task of coping with an influx of so many critically ill babies, so it didn't spot deteriorations or manage resuscitations well enough, particularly at night. The Countess of Chester hospital consultants are likely to seriously resist this, as it leads us down the path to clinical negligence litigation.

Gotcha moments (GMs)

MCDONALD must also nullify the many "gotcha moments" the prosecution delivered in the original trial, and find at least one of his own…

GM1: A certain expert

DR DEWI Evans, lead expert for the prosecution, had long since retired from neonatal clinical practice but had been an expert witness for more than 30 years. When he heard about the police investigation into deaths in babies treated at the Countess of Chester neonatal unit, he offered his services via the National Crime Agency (NCA). The NCA contacted Cheshire Police, who in turn contacted Dr Evans.

He was first employed by the police to examine all the case notes, and managed to spot seven cases of probable murder. He was then employed by the crown court as an expert witness, to provide an independent view on his own evidence of murder. That seems like a clear conflict of interest but is in fact standard practice that gives a single expert witness huge power over a trial.

MD has corresponded at length with Dr Evans and, despite all the ignorant experts speaking up in the media, he is as certain as ever that he is right and Letby is a murderer.

MD asked Dr Evans two questions: 1. What other causes of death or deterioration did you consider alongside deliberate harm? 2. How did you exclude them?

His responses were:

1. "In relation to the seven deaths, it was possible firstly to exclude natural causes such as haemorrhage, infection or some congenital problem. The unexpected collapses were very unusual – and consistent with air embolus, air injected into the bloodstream. This was the most likely cause before the radiology evidence was flagged up by Owen Arthurs (air in the great vessels) and the peculiar skin discolouration noted by the local medics. These findings were not essential to the diagnosis but added to the clinical presentation already noted.

"Having made the diagnosis (the injection of air), it could have happened accidentally or intentionally. If it was accidental, the cause would have been easily spotted, as it's normal for two nurses (or a doctor and nurse) to be present when babies are given fluids or drugs intravenously. Any deterioration would have occurred there and then. There were no reported events of this nature. The collapses occurred when the infants were in Letby's sole care."

2. "I was able to exclude other causes, such as the ones noted above, because there were no other causes. Sorry if that sounds rather odd. But that's clinical practice for you."

Either Dr Evans is a brilliant diagnostician who overturned six coroners' post-mortems to find murder, or McDonald and his team of experts will discover serious flaws in his reasoning when they have had a chance to go through all the documents.

Odd choices

AS DR EVANS' backup paediatric expert, the NCA selected Dr Martin Ward Platt, who, along with Sir Roy Meadow, wrongly concluded babies had been smothered to death in the UK's most notorious paediatric miscarriage of justice (in 2003), based on grossly erroneous statistics.

Dr Ward Platt would have been an easy target for the defence, but he died before he could give evidence. Dr Evans says he had no idea of his connection to Meadow and no input in choosing him or his successor Dr Sandra Bohin, another retired paediatrician who agreed entirely with Dr Evans.

Dr Evans did not think there needed to be statistical experts at the trial because "stats weren't relevant" to the case, and said: "The *Guardian* letter from '24 experts' – statisticians and neonatologists who have had nothing to do with the case – asking that the Thirlwall inquiry is postponed is professional hubris of the worst order."

GM 2: Insulin poisoning

THE first and unanimous jury findings against Letby were guilty verdicts on two counts of attempted murder by insulin poisoning. Dr Anna Milan, a biochemist at the Royal Liverpool Hospital, testified that tests carried out at her hospital showed insulin had been given to two babies rather than being produced by the pancreas, and as they were not prescribed insulin it was either an error or deliberate harm.

Her reasoning was that the tests showed the two babies had very high levels of insulin in their blood but very low levels of C-peptide. The accuracy of these tests was corroborated by Dr Gwen Wark, director of the RSCH Peptide Hormone Laboratory in Guildford, a specialist centre for insulin testing. The results were interpreted in court by Prof Peter Hindmarsh, a paediatric endocrinologist employed by the prosecution but acting for the court. He explained that C-peptide is produced with insulin in the body; it therefore follows that if there is very little C-peptide present, the insulin must have been introduced from outside. Letby and her defence even accepted that there had been a poisoner at work on the ward, but that it wasn't her. That single exchange might well have sunk her. Neither knew about definitive insulin tests, and they weren't alone. As Dr Evans told MD: "I didn't even know that there was more than one way of measuring insulin until I read the comments from Wayne Jones [see below]."

WHAT THE JURY SHOULD ALSO HAVE HEARD: Alan Wayne Jones, a professor of toxicology, is adamant that the immunoassay method used to measure insulin is insufficient to

accurately determine the level in a criminal trial, because of the risk of false results. Other experts have explained how false results using this test are even more common in neonates.

Instructions posted on the Liverpool laboratory website where the samples were analysed clearly states that if "factitious administration of insulin" is suspected, the samples should be sent to a specialist laboratory for proper forensic analysis. This was never done, and the jury was never told of this failing.

Far from being two barn-door cases of insulin poisoning, the blood results were not noted as suspicious by doctors at the time and were only picked up months later in a notes trawl, when it was too late to do definitive testing.

Another insulin expert confirmed to MD: "The results are, in my view, conclusive: there is no evidence of insulin poisoning."

GM3: Liver trauma

IF YOU listen to *Lucy Letby – the Strongest Evidence* on YouTube, which narrates the court transcript, there is a convincing case of Letby losing control at the end of her murder spree and switching from the subtler modes of deliberate harm proposed by Dr Evans (air in the stomach, fluid in the stomach, air and fluid in the stomach, air in the veins, insulin poisoning, dislodgement of airways) to killing Baby O not just by injecting air into a vein to cause embolism but also by hitting the baby so hard over the liver that it caused the kind of trauma the pathologist had only seen before in a road traffic accident or cases of deliberate harm.

The prosecution repeatedly showed the photos to the jury. If Letby was capable of insulin poisoning, she was equally capable of punching a baby to death, even though no one saw her do it and her nursing colleagues had no doubts about her cometence and compassion.

WHAT THE JURY SHOULD ALSO HAVE HEARD: A plausible alternative for the clinical picture and liver damage, from experts who have knowledge of the clinical records, is a ruptured subcapsular haematoma of the liver, possibly compounded by resuscitation injury. These are well known and well referenced causes that should have been explained to the jury but weren't.

GM 4: The spreadsheet

THE much-flourished spreadsheet – "she must have done it, she was there or thereabouts at every collapse!" – is merely proof that Letby was on duty when Letby was on duty. Just because you're on duty, it doesn't prove you punched a baby.

To discredit the spreadsheet, McDonald needs to look at all the other deaths and deteriorations that happened on the unit during that period that weren't included. In reality, everyone might just have been doing their best in an understaffed, overloaded NHS unit, which is all too familiar. And it's statistically far more likely than murder.

GM 5: The confession

THE *Guardian* has recently revealed that the post-it note "confessions" from Letby were in fact "produced after counselling sessions as part of a therapeutic process in which she was advised to write down her troubling thoughts and feelings". This was never revealed to the jury, and neither her counsellor nor any psychologist was called to explain what the stress of being suspected of being a baby murderer can do to your mind.

David Wilson, a professor of criminology at Birmingham City University who specialises in serial killers, said that in his view the so-called confession notes were "meaningless" and had no value as evidence. If only he'd said that at her trial.

GM 6: The courageous whistleblowers

MD WAS initially very convinced by the whistleblowing paediatricians who were convinced Letby was harming babies, as I'm sure the jury was. You would be unhinged to invite the police into your unit to investigate deaths unless you were sure it was murder. If the police decided on clinical negligence instead, it would be a gross act of self-sabotage.

The doctors are unlikely to change their minds, although I have sent Dr Jayaram a list of plausible alternative causes for all 17 cases, as requested, from tertiary centre specialists who have knowledge of the case notes. He has not responded to it.

In contrast, Dr Evans responded very promptly: "I hope this doesn't sound partisan, but the more information I receive challenging the prosecution case, the greater the evidence in their favour… Your documents are the first I've received that contain 'alternative' explanations. I've had very little difficulty in challenging them so far."

GM 7: The open goal

A LAY jury won't have understood all the scientific complexities in the original Letby trial, but they didn't need to because the judge, Mr Justice Goss, directed them that it was not necessary for the prosecution to prove the precise manner in which she had acted, only that she had acted with murderous intent. Seven consultant paediatricians were certain she had acted with murderous intent, and Dr Evans was certain he had proved murder with the help of other experts. Not a single expert spoke up for Letby. The only surprise is that the jury didn't convict her on all charges.

Nurses united

NEONATAL nurses are a close-knit and closely observed group who usually spot unacceptable attitudes and practices. None of Letby's fellow shift workers gave evidence against her. Some wanted to speak up for her but were "discouraged and threatened", according to the *Telegraph*. Some have given written evidence to the Thirlwall Inquiry supporting Letby and saying they do not believe she is a murderer. They have been told they won't be called to give oral evidence. The stench of cover-up grows stronger.

Insulin inconsistency – a defence gotcha?

DR EVANS told MD: "There was a third insulin poisoning in November 2015. The insulin value was recorded as ">1000" and the C-peptide as "220" as handwritten entries in the notes. This is VERY abnormal. One expects the C-peptide to be 5-10 times the insulin value normally. Letby was most certainly on duty. She was the nurse who measured the six low glucose values, lowest of 1.0, when the baby was hypoglycaemic for nearly eight hours. The baby certainly survived and as far as I know is well. He was sent to Alder Hey and received a diagnosis of hyperinsulinism. But I think that is incorrect. If the baby had endogenous hyperinsulinism – ie producing his own insulin – his C-peptide would be high as well."

Either the baby was poisoned, probably by Letby, and the consultants at the tertiary referral centre (Alder Hey) got the diagnosis wrong. Or they got their diagnosis right, and this case shows that the pattern of blood results that the prosecution argued "could only have happened with insulin poisoning" could also in fact happen with other conditions because the test concerned is not sufficiently accurate in neonates. In which case, the wheels come off the prosecution case entirely. Did the police drop the third insulin poisoning because it contradicted the "killer evidence" of the other two? McDonald must find out.

Alternative ending

A YEAR ago, the police, Dr Evans and Dr Jayaram were all very confident there would be more successful prosecutions of Letby. Dr Evans has now reported on 82 cases to the police, of which Letby was convicted on 14. Further convictions should be relatively straightforward now Letby is a mass murderer, convicted on largely circumstantial evidence and the certainty of Drs Evans and Jayaram.

So where are these other murders?

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