

# PRIVATE EYE

SPECIAL REPORT PART 26 & 27



## THE LESSONS OF THE LUCY LETBY CASE

DR PHIL HAMMOND (MD)



# THE LUCY LETBY CASE: PART 26 & 27

## PART 26

**LAST weekend's ITV documentary, *Lucy Letby: Beyond Reasonable Doubt?*, meticulously dismantled the four pillars of the prosecution case against her (the shift chart, the Post-it notes, the medical theories of deliberate harm and the insulin blood tests – all *Eyes passim*).**

It was equally scathing of both the defence and prosecution in allowing such a scientifically and statistically illiterate trial to go ahead, and the Chester consultants for not spotting their own substandard care.

Letby's new barrister, Mark McDonald, explained that international experts only agreed to examine all the records for appeal if their findings were made public, even if they found against Letby. Letby agreed.

Professor Neena Modi, the UK's most senior neonatologist, was one such expert: "This unit was being required to look after babies who should not have been cared for there. The babies were all extremely vulnerable. Some of them were, demonstrably and recognisably, on a knife edge. Others could have been recognised to have been on a knife edge, but they were not monitored appropriately and they were not treated appropriately. Problems went unrecognised, until the point at which babies deteriorated very abruptly. So the babies might not have died had their difficulties been addressed earlier."

The conclusion was clear. You don't need to invent a murderer, or methods of murder, to explain how these babies died.

Telling moments included *Guardian* journalist Josh Halliday, who covered the trial, describing how astonished he was that the defence called no expert witnesses. He told MD he initially thought she was probably guilty but now, having heard experts explain the flaws in the prosecution and more plausible causes of death, he thinks there is a realistic prospect the convictions are unsafe.

## PART 27

### Channel hopping

EVERY terrestrial channel is offering a take on Lucy Letby – so which can you believe?

Channel 5 was first to doubt the safety of the convictions with *Lucy Letby: Did She Really Do It?*, followed by an update, *The New Evidence*. ITV gave us *Beyond Reasonable Doubt?* and Channel 4's two-part offering awaits a transmission date. Meanwhile, the BBC's *Panorama* has already put out three documentaries, the most recent on BBC1 last week being *Lucy Letby: Who to Believe?* (which has already had to be re-edited – see *BBC error*, below). It followed on from *Unanswered Questions* and *The Nurse Who Killed*. The shift in titles suggests an uncomfortable shift in mindset at the BBC.

*Panorama* has been conveniently scheduled to promote the presenters' book. Jonathan Coffey and Judith Moritz's first edition was called *Unmasking Lucy Letby – The Untold Story of the Killer Nurse*. The new edition, *Unmasking Lucy Letby: Nurse, Friend... Killer?*, is trying to mask a reversing ferret.

### Smashie and Nicey

FOR *Who to Believe?*, Coffey and Moritz debated the big questions like amateur sleuths. Lead prosecution expert Dr Dewi Evans explained that it didn't really matter that he'd changed his mind over methods of murder from air injected into a nasogastric tube to air injected into a vein...

**Moritz:** It's not like [he's saying]: "There's no gunshot wounds at all; I've decided instead they drowned."

**Coffey:** Some people would say that's *exactly* what we're dealing with here.

**Moritz:** It's certainly a difficult case to get your head around.

**Coffey:** Well, some people would say it's *not* a difficult case to get your head around, that actually they have got their head around it and the prosecution expert evidence is all over the place.

**Moritz:** Yeah – and other people would say they got their head around it and *convicted* her!

### Uncertainty vs Certainty

TO BE fair, the book and BBC documentaries are packed with clues that the convictions are not safe. A hallmark of science is changing your mind as you become aware of better evidence, as MD does all the time and as Dr Evans is entitled to do. The big red flag for Evans is his absolute certainty.

Coffey and Moritz reminded viewers that Letby has been convicted of murdering and harming babies by injecting air into veins, injecting air into stomachs, causing trauma, poisoning with insulin, dislodging breathing tubes and overfeeding. Coffey observed correctly: "There are so many different allegations, and no direct evidence for any of them." Nor any confessions; and very little forensic evidence either. But there is Evans.

Despite these gaps, and Evans' multiple changes of mind when he found Letby wasn't on duty at times when he suspected

foul play, Evans declared: "She's as guilty as they can be." Asked whether he was sure about that, he replied: "Yes."

Clearly Evans has skin in the game and is hundreds of thousands of pounds wealthier as a result. But independent expert witnesses are not supposed to pronounce on guilt; they are expected to talk like scientists. Had he said: "In my view, the most probable explanation for the deaths and collapses is deliberate harm," then fine. But his absolute public certainty about Letby's guilt and her evil nature does the reputation of independent expert witnesses no favours.

Evans was given airtime to argue he knew Baby O had suffered deliberate harm to the liver within ten minutes of looking at the notes. No one else supported this view. In *Panorama* part 1, consultant Ravi Jayaram was equally certain he had caught Letby deliberately dislodging Baby K's breathing tube. An email from him has since emerged stating Letby had actually called him for help – something he denied under oath. He declined to comment.

### A balanced view?

MORITZ and Coffey could not muster a single credible expert to agree with Evans that the *only* explanation of the collapses and deaths was deliberate harm, because everyone knows this is, er, bollocks. However, they did interview a highly credible professor of paediatric endocrinology, John Gregory, who behaved as an expert should. In his view, if the tests were accurate, the most plausible explanation for the high insulin, low C-peptide and low glucose results in two babies was "that insulin had come from outside the body, perhaps in the form of an injection". Note that he did not say: "It must have been attempted murder by Lucy Letby."

### Differential diagnoses

BABY O and the two insulin poisonings were the three cases on which the jury unanimously agreed on Letby's guilt. The jury members were then allowed to use that knowledge to direct their majority verdicts in other cases. The new defence experts clearly have to challenge these. The "serious flaws", according to *Panorama*, are that different experts (acting pro bono for the defence) have come up with different theories for some of the babies.

This was sold as a shocking revelation that puts the entire defence in doubt. But this is how medical science works: different experts form different views based on their independent interpretation of the evidence and come up with differential diagnoses. This contrasts with the prosecution experts who were all given Evans' reports to guide their opinions.

### Insulin theories

● **Poisoning:** Someone deliberately poisoned two babies with insulin. However, Letby was not observed doing this and was not always on duty, so it was argued that she secretly spiked multiple feeding bags with insulin that were given to babies when she was off duty. No insulin shortage was found and no bag tampering was observed. Most oddly, only one baby at a time appeared to

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have been poisoned. At the time, doctors did not suspect poisoning; nor did they do definitive tests to prove it.

● **Wrong test:** The immunoassay test used for insulin has a significant false positive rate, is not considered accurate enough for commercial drug testing and certainly isn't sufficient to jail someone. The false positive rate is likely to be higher in premature babies, who can have circulating antibodies which cross-react with the test and antibodies that bind to insulin, effectively storing it and raising the levels.

● **Lab transcription error:** Evidence from calibration testing at the Liverpool lab shows likely mixing up of the C-peptide and insulin samples.

Of these possibilities, poisoning is the least likely. Letby's secret bag-spiking to explain low blood sugars when she was off duty is fantastical. Detailed defence reports conclude the low blood sugars in these babies are explained by their clinical state and clinical failures (eg an IV-line leaking sugar into a hip) and returned to normal when errors were corrected. And a third baby (Y) had the same blood pattern the prosecution argued could only happen with exogenous insulin but turned out to be making too much of its own (congenital hyperinsulinism). Unsurprisingly, this baby didn't make the charge sheet.

## Baby O

MD has written extensively on Baby O (*Eye* 1653) based on the analysis of defence expert Dr Svilena Dimitrova, who co-wrote a 65-page report with Dr Neil Aiton.

The report argues that Baby O's death was not due to deliberate harm but was avoidable with better management. The lungs were massively hyper-inflated, restricting the heart, cutting off venous return and pushing the liver into a position where consultant Stephen Brearey may have punctured it with a needle and caused a haemorrhage as it breached a subcapsular haematoma (as evidenced by him drawing back blood, a large drop in haemoglobin and a lot of blood found in the abdomen). However, the baby would likely have died anyway from resuscitation and ventilation failures.

At the press conference, neonatologist Dr Richard Taylor majored on Brearey's alleged liver breach, as did the media. *Panorama* used an unnamed pathologist to argue he could find no evidence of needle injury (although how you would find it after a haematoma has ruptured was unclear).

Dr Aiton told *Panorama*: "There are two possibilities. One is that the liver capsule was ruptured by the needle; one is that the liver capsule ruptured spontaneously." Either way, it was nothing to do with Letby. And whatever the cause, Brearey had a duty to report his bloody needle procedure to the coroner, and didn't.

There were clearly subcapsular haematomas in the liver of Baby O (and his sibling Baby P), but they can be caused by, and rupture for, different reasons. Crucially, no defence expert – nor the *Panorama* expert – could find evidence of the deliberate blunt trauma which set Evans off on the path of a murderer.

## BBC error

THE answer to "Who to believe?" turned out not to be Moritz and Coffey, who concluded with a devastating graphic showing that during Letby's training, babies' breathing tubes became dislodged on "around 20" occasions during "around 50" shifts when Letby was on duty, at a rate of "around 40 percent". "It's empirical, it's something they measure," said Moritz. Coffey confirmed it was damning evidence.

Four days later, the BBC confessed it only had data to confirm four tubes had become dislodged during 11 shifts in 2015, but did not say how many babies were ventilated during those shifts, so it's impossible to work out a dislodgement percentage (it's likely to be much less than 40 percent). It did, however, add that tube dislodgement during the rest of her training was "substantially lower". The *Panorama* was re-edited to remove the error from BBC iPlayer.

The tube dislodgement claim was first floated at the Thirlwall Inquiry, with no supporting data, and provoked strong statistical objections, which the BBC and

Thirlwall ignored. It would be no surprise if it reappears in court one day.

## Bottom line

WE MAY never have a definitive diagnosis for some of these babies ten years after their deaths. But none of the defence experts – many of whom are more expert than those who gave evidence at trial – can find the same definitive evidence of deliberate harm that Evans found.

When he was asked: "How can other experts look at the same evidence and find no evidence of deliberate harm?" he replied: "It may be they don't know as much as they think they do." Or perhaps they know far more than Evans does. Either way, the appeal court must decide soon.



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