

PRIVATE EYE

SPECIAL REPORT PART 32

THE LESSONS OF THE LUCY LETBY CASE

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THE LUCY LETBY CASE: PART 32



Police failure

“THERE is absolutely no evidence whatsoever... the material before the court, in my view, was obtained by an investigation that was unconsciously skewed by confirmation bias... there has been an egregious miscarriage of justice.” So said Dr Steve Watts, Hampshire’s former assistant chief constable, on how Cheshire Police investigated Lucy Letby (as reported by the *Telegraph* last week).

Watts is also a former vice-chairman of the national homicide working group of the Association of Chief Police Officers, and drew up the national policy for investigating deaths in healthcare settings.

He believes the police were “overawed” at a meeting with two consultants, Stephen Brearey and Ravi Jayaram. In May, David Davis MP asked Cheshire Police to investigate Jayaram for perjury, following “a clear and concerning discrepancy between the sworn evidence presented to the courts and the contents of an email”. The Court of Appeal had previously noted “inconsistencies” in his evidence.

The *Telegraph* also reported that the National Injuries Database had warned that a panel of independent experts should review the cases, including a forensic and neonatal pathologist, a forensic toxicologist, a clinical pharmacologist, a nurse with experience of a baby unit, a medical expert in working a specialist baby unit and an obstetrician. Instead, the medical notes were handed to a long-since retired paediatrician, Dewi Evans, with no high-level neonatal experience.

Evans spotted deliberate harm within 10 minutes of looking at the notes of Baby O. Other experts were then brought in to peer-review his findings, rather than look at the notes with fresh eyes. And there was no statistical input to consider other causes. You couldn’t create a better system for confirmation bias.

Expert reform

THE *British Medical Journal* has published an article by MD and Dr Svilena Dimitrova, a neonatologist and instructed expert for Lucy Letby’s Criminal Cases Review Commission (CCRC) application. We argue for urgent reform in the way medical testimony is used in criminal trials, to reduce the risk of miscarriage.

“The UK lacks formal regulation of medical expert witnesses,” the article states. “There is no statutory register, no mandated peer review of the evidence submitted in court, and no oversight from royal colleges. Although the General Medical Council offers guidance on providing expert evidence, it is largely up to individual doctors to decide if they are qualified to act as an expert, subject ultimately to the court’s control.”

“Courts may approve doctors who would

not be considered experts by their peers or who have long since retired and lack current understanding of the specialty areas they are analysing. The adversarial structure of our legal system creates strong incentives for ‘expert shopping’ – seeking out those willing to frame opinions in support of a particular narrative. Although experts are formally required to provide impartial evidence, they are often not held accountable if they fail to do so. This dynamic allows some experts to provide opinions aligned with the interests of the instructing party. Many excellent clinicians that we have spoken to, who would be suitable experts, choose to avoid working in the criminal justice system, citing concerns about scientific integrity.”



Letby trial flaws

THE prosecution at the Letby trial argued that the *only* plausible explanation for collapses and deaths was deliberate harm, and the *only* explanation for blood test results was insulin poisoning. This was seriously wrong. There are far more plausible and evidence-based explanations than deliberate harm. Of the two main proposed modes of murder, Evans now says death by air down the nasogastric tube didn’t kill three babies, and the “skin change” theory to support venous embolism has been dismantled by post-trial research (*Eyes passim*). Even the prosecution experts have serious disagreements about how the babies died.

Expert doubts

THE *Eye* has seen reports from all the prosecution experts for Baby O, who Letby was convicted of murdering by a combination of venous air embolism and inflicted liver trauma. Paediatrician Dr Sandie Bohin was unsure about the latter: “I suggest an alternative causation for the ruptured subcapsular haematoma/liver trauma be explored, ie could this be iatrogenic trauma secondary to attempts at decompressing the abdomen with a cannula?”

Bohin did think there had been intravenous air administration, as did Evans. However, paediatric radiologist Owen Arthurs reported: “The gas reported on postmortem radiographs is in keeping with trauma and resuscitation, rather than intravenous air administration.” Meanwhile

the report from neonatal pathologist Dr Andreas Marnerides reported that Baby O died from “inflicted traumatic injury to the liver and profound gastric and intestinal distension following acute excessive injection/infusion of air via a naso-gastric tube”. As a reference to support this, he cites a paper titled “Acute gastric dilatation secondary to septicaemia in newborn”, which has nothing to do with deliberate air injection but might explain why some babies had so much air in their stomachs.

Evans has since dismissed air in the NG tube as a cause of death, but Marnerides’ report strongly supports it yet makes no mention of the air embolism Letby was convicted of using. Hardly a united view.

Parental help

MULTIPLE neonatal experts from the UK and abroad agreed to work pro bono for Letby’s CCRC application on the understanding their findings would be made publicly available, irrespective of whether they help Letby or not, and the entire reports would be offered to the parents. Letby’s barrister Mark McDonald has repeatedly made this offer. In addition, neonatologists Dr Dimitrova and Dr Neil Aiton are offering to sit down with the parents and go through their reports.

New expert reports

AITON and Dimitrova’s report on the death of Baby O is far more detailed compared to the prosecution reports. For example, they are the only experts to have digested page 97 of the clinical notes, which gives a clear, contemporaneous record that a dramatic fall in haemoglobin was recorded after consultant Stephen Brearey inserted a cannula in the right-hand side of the abdomen and drew back blood. This does not prove that this action caused a haemorrhage by breaching a pre-existing liver haematoma, but it has a far sounder evidence base than Letby punching the baby in the liver hours before the haemorrhage without anyone seeing her. They detail the evidence that, far from being unexpected, Baby O’s deterioration was predictable and his death was avoidable and resulted from suboptimal care. They found no evidence of deliberate harm and believe Baby O could have survived with better clinical care (*Eyes passim*).

Was there any poisoning?

THE prosecution was clearly wrong to argue the *only* explanation for one-off high insulin/low C peptide blood results was insulin poisoning. Other babies, including at least one at Chester, had the same one-off results but had not been given insulin. The unreliability of one-off immunoassay tests in neonates, and the need for a confirmatory test for exogenous insulin – which the laboratory processing the test clearly demanded – is detailed in new expert reports.

The baby’s prolonged low blood sugar is meticulously explained without the need for poisoning. The long line (an IV tube) became misplaced, so glucose wasn’t getting into the blood stream, and the baby was

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septic and thus had a higher metabolic rate, demanding more glucose. Milk was vomited up because of infection. Instead, the prosecution argued the low blood sugar could only have been insulin poisoning and, as Letby was not always on duty, she must have spiked Baby F's nutrition bag with just the right amount of insulin to give a ridiculously high ("false") test reading but not kill the baby.

Baby F needed more than one TPN (total parenteral nutrition) bag, so Letby must have spiked more than one. Did anyone notice the insulin was missing? What happened to the other babies who had spiked bags? There should have been more "unexplained" hypoglycaemia, but none was observed, and nor was Letby. Finally, the new experts allege that the prosecution's insulin expert, Professor Peter Hindmarsh, made a number of serious errors in his analysis. MD has put this to him, and he has declined to comment.

CCRC response

The CCRC is being asked to consider whether the top three prosecution experts should have been experts in this case. Evans' evidence in an unrelated case was declared "worthless" by Lord Justice Jackson, who observed that "he makes no effort to provide a balanced opinion". Also in an unrelated case, and in the middle of giving evidence, Hindmarsh had the most serious restrictions placed on him by the General Medical Council short of suspension. In December 2022 he was ordered to "only work at University College of London Hospitals NHS Trust", and "he must be supervised in all of his posts by a clinical supervisor, appointed by his responsible officer". MD asked Hindmarsh what he did to warrant such severe sanctions and whether it affected his integrity as an expert witness, and again he declined to comment. The CCRC must find out.

Meanwhile Bohin has for some while been vigorously defending complaints from Guernsey parents about her actions and judgement as a paediatrician. All these issues should have been declared to the trial judge, Mr Justice Goss, who presumably cleared all three to be reliable experts in this case. Was this the right decision?

Parting shot

MD IS pausing from this story to allow the CCRC to catch up. If it hasn't acted within a year of referral (ie by early February), MD believes the anonymised reports from all experts should be made public. With no direct evidence against Letby, it all came down to the hugely varied opinions of independent experts, some of whom were neither independent nor expert. Without expert reform, this will keep happening.



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