

4th October, 2022

Discussion Re Lucy Letby's Circumstances and Fitness to Attend

Tuesday, 4th October, 2022

MR JUSTICE GOSS: I am sorry that the court is sitting slightly late but I have a lot of material to look at and I am still looking at it.

MR JOHNSON: Yes, thank you.

MR JUSTICE GOSS: I thought it important for the court to assemble, because this is the first day of this trial, in particular to identify the timetable for today and successive days. I anticipate, when I have heard from you, you may wish to make representations about that. At this stage, we will have another break, so I can complete the tasks that I wanted.

MR JOHNSON: Thank you, my Lord. So far as representation is concerned, the prosecution team remains the same. The defence team now has the advantage of the addition of my learned friend Ms Fiona Clancy, pursuant to the order that your Lordship made following the last hearing. My learned friend Mr Jude Bunting, KC is here on behalf of at least some of the press organisations.

MR JUSTICE GOSS: Yes.

MR JOHNSON: Having discussed the position with my learned friends, we believe that really the first item on the agenda, so far as the Bar is concerned, at least, is for my learned friend Mr Myers to deal with an issue that has arisen with the defendant.

MR JUSTICE GOSS: Yes.

MR MYERS: My Lord, before we proceed, I would like to raise our concerns with regard to Ms Letby. We have provided a short note, accompanied by a report from Dr Louise Bowers. I do not know yet whether your Lordship has had the opportunity to see the contents of it.

MR JUSTICE GOSS: When was that taken?

MR MYERS: We provided the note yesterday evening after Dr Bowers had seen Ms Letby at extremely short notice. I am only going to summarise the position at the moment to assist my Lord in any event.

MR JUSTICE GOSS: I am not sure it has actually come through to me as yet. I did get a lot of documents sent through.

MR MYERS: We understand.

MR JUSTICE GOSS: Could one of your juniors send it through directly to me.

MR MYERS: Yes, of course.

MR JUSTICE GOSS: You have my email.

MR MYERS: I am not sure that we do have your Lordship's email address. In fact, I know that it was sent to Mr O'Leary but I appreciate the amount of material that has come to your Lordship. It would be part of a large body of it. It certainly would assist my Lord to see what is in that. It deals with a situation that is causing us enormous concern. To put it bluntly, it is precisely the thing that we wanted to avoid. I have spent months trying to avoid. I can summarise it now if that assists.

MR JUSTICE GOSS: Yes, please.

MR MYERS: But I would wish to enlarge upon it in due course. Ms Letby is currently in -- and it is no exaggeration to say -- a dreadful state. On her behalf, we will be asking the court not to proceed until there is some improvement in that. There may be some matters that can be dealt with but, I respectfully submit, not many.

What we have to complain about is not directed at those currently looking after Ms Letby or those currently accommodating her, because so far as we understand, they have no part in what has taken place. On Friday afternoon last week, she was moved from where she had been in Bronzefield for some time, to HMP New Hall in Wakefield, about 45 miles from here, without any of her possessions, without even a brush or toiletries or clothing, without any of the support regime that she has been provided with and has been left in an utterly disorientated state. She is incoherent. She cannot speak properly and we would say cannot think clearly at all.

Last week, it would be last Monday, in fact, when I last met with Ms Letby, together with my instructing solicitor and Ms Clancy. That is a final meeting in what has been two years of support in preparation for this case, in which there has been a massive improvement in her position and her ability to cope. That has been, if I can put it this way, blown away by what has happened.

The report of Dr Bowers is very short. We summoned her assistance as soon as we understood what the position was and

she saw Ms Letby as quickly as she could yesterday afternoon. That report outlines -- it is a letter really -- the position. It is certainly no overstatement. Once we were aware of the situation, I informed my learned friend Mr Johnson, KC, of the requirement for an assessment. I did that yesterday morning when we realised there was a requirement for an assessment. Steps are being taken for Professor Ireland, who prepared the reports, to assess Ms Letby. That could not be done as quickly but obviously will be done as quickly as possible.

MR JUSTICE GOSS: How soon will that be?

MR MYERS: I do not know the timing, my Lord. I look to my learned friend.

MR JOHNSON: I am not sure it is going to be very possible in the very near future for reasons that are outside our control.

MR JUSTICE GOSS: Professor Ireland is not in the foreseeable future.

MR MYERS: Not in the foreseeable future. I impress this upon your Lordship: Ms Letby has been preparing for trial. She wants to have her trial. We want her to have her trial. This is not a preamble to raising some type of defence or any objection which in any way is designed to prevent that from happening. Our concern, reflecting hers, is that she is able to participate properly in what is about to take place.

The move that has taken place at such short notice, after we have spent months asking for this to be done beforehand because of her need to adjust, has been highly damaging and traumatising. I am just giving this in short form at this point, my Lord. Following on from that, there are two issues. The first is her condition now. The second is what we do about the fact that she is being accommodated in a prison that, on a good day, will be a three-hour round trip -- on a good day from Wakefield to Manchester and back -- during which we know, or as a result of which we know, there will be problems with eating, and that is with somebody who has problems with eating, sleep, rest, washing and difficulties with communicating with us at court.

By way of example, my Lord, Ms Letby was woken today, in the terrible state that she is in, at 5.45 am to leave at 6.45 am to, as we understand, arrive at court at 9.15 am, at that point, not having eaten or taken water. I do not know how much of that is her choice or how much of that is the situation that she is in, but that is the reality of it.

That is, we respectfully observe, utterly unsustainable for a six-month case like this with allegations like this. We are in

an impossible position. We are concerned about her and we are concerned that we are able to represent her properly. We have spent, no exaggeration to say, years preparing for this. We now find ourselves in this position. It is important, I respectfully observe, that your Lordship does have the opportunity to see the material we have sent through.

MR JUSTICE GOSS: Yes.

MR MYERS: We appreciate it did arrive late but perhaps your Lordship will understand that is purely because that is as soon as we could get it to you.

MR JUSTICE GOSS: No criticism whatsoever. It had not got right through to me and so I am listening very carefully to what you are saying.

MR MYERS: I understand, my Lord. Our concern is that we do not proceed with anything beyond the least formality really today. So far as we can see, Ms Letby is incapable of engaging with what is taking place and cannot play a part in what is happening because of the condition she is in. Our concerns extend beyond that, going forwards. The immediate problem is that she stabilises and reorientates herself. It is a little difficult to know how long that will take. Our concern is that we do not proceed if she is not ready. That extends, my Lord, I have to be plain, from our position, to engagement with the jury. This is absolutely not of her making. This is such a serious case and so much rests on it. She has been put in this position by the failure, so far as we can see, to make timely and sensible decisions by those who run the greater arrangement for her accommodation and transport. They have been asked to do that serially for the last six months. Those who instruct me have been in touch to try to urge them to do so.

MR JUSTICE GOSS: I have seen the correspondence.

MR MYERS: I refer to that in the note that your Lordship has. It is so unfair for the defence in general but for Ms Letby, in particular, to be placed in this position now, after everything that had happened. We certainly would not wish for her to be presented to the jury at a disadvantage to herself, because of the position that has been created by others. We would not wish her to be in front of a jury when she cannot properly process what is happening. This morning she struggled to find the word for "jury" when discussing or trying to speak about what was happening. There was barely any speaking at all, almost nothing. That is not wilful; she wishes to proceed. Our anxiety is that that does not happen until she can do so properly.

MR JOHNSON: My Lord, we believe that your Lordship needs to see the information.

MR JUSTICE GOSS: I am going to see the information. Can you just help me. There has been reference to a proposal that Professor Ireland should see her, but that apparently is not practical.

MR JOHNSON: No.

MR JUSTICE GOSS: What alternative possibility is there?

MR JOHNSON: I need to find out.

MR JUSTICE GOSS: You need to find that out.

MR JOHNSON: Yes.

MR JUSTICE GOSS: I need to read this material.

MR JOHNSON: We have had a communication from Professor Ireland who has seen Dr Bowers' report. Perhaps I can be left to discuss that with my learned friend.

MR JUSTICE GOSS: I will not ask any further.

MR JOHNSON: Can I put it this way. In the light of Dr Bowers' report, we are not raising any concerns about what has happened so far in terms of the defendant seeing Dr Bowers and the conclusions that Dr Bowers has reached. There are no issues raised about that at the moment.

MR JUSTICE GOSS: The appropriate course would be for me to read that material and you, if you can obtain any further information or enquiries can be made, that would be helpful, unless anyone has any other concerns.

MR JOHNSON: Yes, thank you.

MR JUSTICE GOSS: Mr Bunting, I am afraid you may have to wait.

MR BUNTING: I think I am the least of the court's concerns right now. I am very grateful. Can I apologise for sending through the material last night. That may have distracted my Lord from other important information.

MR JUSTICE GOSS: I have a lot of material in front of me. Suffice it to say, I was not able to read and assimilate it all in the time that was available to me.

MR BUNTING: I am very sorry.

MR JUSTICE GOSS: No, it is not actually in the list of priorities; it is lower down.

MR BUNTING: I understand.

MR JUSTICE GOSS: (Inaudible) Thank you very much.

MR BUNTING: Thank you.

MR JUSTICE GOSS: The court will then rise. May I just say something about the proceedings with which counsel are familiar and some are not entirely familiar with the arrangements. I am conscious of the fact that the proceedings in this physical courtroom are being listened to by others in different locations. Can I just say to people who are in those other locations, although they are not present in the courtroom itself, they are, for legal purposes, equivalent to being in the courtroom. Therefore, people are expected to behave appropriately as if they were present in the court.

Secondly, I am sure there will not be any different information, but I shall just make it all clear so that everyone knows, if there is any problem with the technology, it will, I know, be drawn to my attention as soon as it is known of. If anyone has any difficulty which is not technological but more physical, such as not being able to hear clearly what people are saying, or anything like that, that should be brought to my attention as well. I want to ensure that, insofar as it is possible and it should be possible, for the people who are attending this hearing remotely are in as good a position as they can be, although they are not present in the well of the court. Thank you very much.

MR MYERS: Ms Clancy, my Lord. I am grateful to Ms Clancy who has sent the note through to your Lordship.

MR JUSTICE GOSS: Directly to me?

MR MYERS: Yes and will make sure the letter from Louise Bowers, Dr Bowers is also with your Lordship and so you have that.

MR JUSTICE GOSS: As soon as I leave the court, I will check. I will read the material.

MR MYERS: Thank you.

MR JUSTICE GOSS: I will then, through my Clerk, indicate when I am going to come back into court.

MR MYERS: Thank you.

MR JUSTICE GOSS: If anyone can send any indication that they are in court(?), then please just pass a note.

MR MYERS: Thank you, my Lord.

(A short adjournment)

MR JUSTICE GOSS: Mr Myers, I have read the document and I have read the letter from Professor Ireland as well. The consequence, as I see it, at the moment is that there is an impediment to this case proceeding. I want enquiries to be made of whoever is responsible, whether it is the Director of the Prison Service or certainly someone in authority with the power of making decisions to enable this trial to proceed, to be acquainted with the situation that currently attains, to liaise directly with me in relation to solutions, potential solutions so far as the accommodation of the defendant for the duration of the trial is concerned and to address the immediate issues in relation to her property, medication and general care are concerned. I want that to be done as a matter of extreme urgency. I can do no more than that.

MR MYERS: My Lord, we know and we acknowledge that. This is not something that your Lordship or, indeed, the court establishment is able to control.

MR JUSTICE GOSS: No, but it is something that I can do my best to facilitate.

MR MYERS: Together with my learned friends who prosecute --

MR JUSTICE GOSS: Unless anyone has any other suggestions, which I will hear.

MR JOHNSON: No suggestions, but we do have a channel of communication open from a senior level in the police to the Prison Service and we will pass that on.

MR JUSTICE GOSS: Thank you very much, yes. I was going to ask for that, rather than me starting from a blank sheet of paper.

MR JOHNSON: Yes. If nothing else, I will try and get a name and a number.

MR JUSTICE GOSS: Thank you very much.

MR MYERS: We are grateful for that, my Lord. I should say some property is beginning to catch up with the defendant now, but still a lot is not.

The other matter that we raise, coming out of what your Lordship has considered and is something to be considered, perhaps, in tandem with the enquiries about accommodation and what to do from here, is any further assessment of the defendant's mental state. We are grateful to the prosecution for providing us with the note, a very short note from Professor Ireland. Your Lordship, I anticipate, has seen that now.

MR JUSTICE GOSS: I have, thank you. I have seen the documents and read them.

MR MYERS: I simply summarise it in this way: that so far as Professor Ireland can, in short form and from a distance, she does not take issue with anything Dr Bowers says; she is broadly in agreement with it. She makes the practical observation and profession one that it has reached a point where it may very well be necessary, in one form or another, for a psychiatrist to assess, both because of the questions of medication and just to consider the position generally. Certainly, having seen that, that would respectfully seem to us to be a sensible thing to do if we can. While, of course, we apply to the court for the time in which to do that, my instructing solicitor is currently making enquiries to see how quickly that could be done. If it was to be done, I anticipate the prosecution would also wish to conduct an assessment for the purpose of establishing the defendant's condition and how to deal with --

MR JUSTICE GOSS: Sorry to interrupt you, Mr Myers. Could there not be a jointly instructed expert?

MR MYERS: I can see no reason why there could not be on this issue. We are as keen as the court and the prosecution to resolve where we are, so that we can proceed. Whoever deals with it properly and swiftly, we certainly, as far as I can see, would be keen to arrange that.

MR JUSTICE GOSS: Because it really addresses the ability of the trial to proceed, not in relation to the outcome of the trial or anything.

MR MYERS: Yes.

MR JUSTICE GOSS: It is a matter that I would consider a jointly instructed expert could address that particular issue and assist the court in that regard. Mr Johnson, are you content with that?

MR JOHNSON: In principle, yes thank you, subject to issues that are raised at a later stage. Yes, thank you.

MR JUSTICE GOSS: Well, the purpose of a jointly instructed one is that it is one that is acceptable for both sides.

MR JOHNSON: Of course. No, I understand that. I was just providing my Lord with the possibility that somebody has thought of something that I had not.

MR JUSTICE GOSS: Very well. I see what you mean. Sorry, I was reading more into it.

MR MYERS: If we define sufficiently focused parameters that we both need to reach, then we can deal with it that way, I would imagine, my Lord.

MR JUSTICE GOSS: Obviously these issues are not going to be resolved in the very near future, so far as the progress of this trial is concerned. As you will know, there is a large number of jurors who are waiting. Do either of you have any proposals in relation to what should be done in relation to that panel of jurors?

MR MYERS: My Lord, since I am on my feet, I will respond first. There are no specific proposals we make beyond this: that we would be anxious not to proceed with the jury until Ms Letby is in a position to be a cognisant participant in that part of the proceedings. If the court is able to allow her to do so, if that is required, then plainly the work that has been put into reaching the stage we have come to with the jury needs to be maintained. The potential jurors should, so far as possible, be requested to attend as soon as we know it is likely we can deal with this. That, to assist the court, will follow from the enquiries we are making as quickly as we can to how long it will take to get an assessment undertaken. We can do that with the assistance of my learned friends. Maybe the court will be in a better position to consider what to do with the jury when the court has some guidance on how long it would take for the defendant to be assessed.

MR JUSTICE GOSS: All I am seeking to do is to preserve this panel. This will be a panel of prospective jurors who have all indicated they do not have any difficulty with being able to serve as jurors for six months.

MR JOHNSON: The information we have been given is that initially, yesterday, there were 300 --

MR JUSTICE GOSS: I can tell you there is a large body of potential jurors who are available, more than is often the case.

MR JOHNSON: Might it be possible for your Lordship to preserve sufficient a panel to make a proper selection from and release the balance.

MR JUSTICE GOSS: I was going to release the balance, but I intend to preserve those who have indicated availability.

MR JOHNSON: Yes.

MR JUSTICE GOSS: In terms of indication, they will not be required today.

MR JOHNSON: No, or tomorrow, I would not have thought.

MR JUSTICE GOSS: Or tomorrow, but obviously they will leave contact details and be, effectively, on standby.

MR JOHNSON: Yes.

MR MYERS: My Lord, yes, we agree. Thank you.

MR JUSTICE GOSS: That is what I will do, thank you. I just wanted that practical assistance as to what -- because this is essentially a tripartite process. I will deal with that.

So far as other issues are concerned, it will clearly be inappropriate to address any of the other issues that are on the pre-trial agenda at this stage.

MR MYERS: There is one we considered, which may be capable of being addressed -- it is a matter for your Lordship -- and that is the question which brings Mr Bunting, KC to court -- which is the reporting aspect of the special measures. That is something that could, perhaps, be dealt with if the court wished to do so.

MR JUSTICE GOSS: The identification aspects?

MR MYERS: Yes, the identification aspects, yes.

MR JUSTICE GOSS: What I was going to do in relation to that was to ask Mr Johnson whether he is going to submit any further material in response to Mr Bunting's.

MR JOHNSON: I could do it, if your Lordship wants me to. I have drafted some notes for myself, which I can fairly rapidly convert into a document that is fit for third-party perusal.

MR JUSTICE GOSS: It need not be a detailed document but just an indication of what your response is to the points that Mr Bunting makes and the authorities to which he refers.

MR JOHNSON: Yes.

MR JUSTICE GOSS: Again, there is no direct urgency today in relation to that but it is something that, if we cannot deal

with it today, we could perhaps deal with it -- or does Mr Bunting want it dealing with today?

MR JOHNSON: In an effort to use court time productively, I could probably be in a position to have something with your Lordship by about 1.00 pm and we could have the hearing at 2.00 pm, if your Lordship wants to deal with that today.

MR JUSTICE GOSS: I will just enquire of Mr Bunting as far as your convenience is concerned.

MR BUNTING: If the court does not want to proceed today, I am sure I will be able to come back on another occasion.

MR JUSTICE GOSS: I was thinking tomorrow morning. Although I have read -- is tomorrow difficult for you?

MR BUNTING: I can personally do tomorrow. My solicitor, I think, is in the overfill court, so I will check with her.

MR JUSTICE GOSS: It is only because it will be a more efficient hearing from my point of view when I have read all the material. Although I have skim read your submissions, I do want to consider the material to which it relates, in particular. So, I want to re-read that material.

MR BUNTING: If it assists, when I drafted the document which I provided to the court, I did not also have access to the witness statements in the applications. I now have access to them and I am content to deal with that orally in whatever way suits the court.

MR JUSTICE GOSS: I think it is better that we are all au fait with all the material. It will make for a more focused hearing of the matters.

MR JOHNSON: I have actually compiled a bespoke bundle of all the applications and underlying statements, which I can easily share by email.

MR JUSTICE GOSS: That would be very helpful, Mr Johnson, rather than me plucking them from the...

MR JOHNSON: Particularly in one of the cases, one of the subjects of the application statement is actually hidden away in a different section and so could easily have -- it will not have passed Mr Bunting by, because I sent him an index. But it may have passed your Lordship by.

MR JUSTICE GOSS: I am not being critical but I found the sections in the DCS, where there are voluminous documents, and it is not easy always to find what you want to find.

MR JOHNSON: No.

MR JUSTICE GOSS: That would be very helpful.

MR JOHNSON: Yes, I will do that straightaway and I will just explain how it works to Mr O'Leary.

MR JUSTICE GOSS: That would be helpful, thank you, yes. We can deal with that this afternoon. Are there any other matters that we want to deal with? I do not want to cause there to be unnecessary sittings of the court. Yes, Mr Bunting, sir.

MR BUNTING: I am just conscious that there is the identification reporting issue which has been raised. I am grateful to my learned friends for alerting me this morning to the concern that the court has raised in respect of social media during the trial.

MR JUSTICE GOSS: Yes.

MR BUNTING: Which is also another knotty issue involving separate authorities. Mr Johnson, KC has helpfully provided me with a brief summary from his agenda document. If the court would wish to hear from me on that, then I can provide some short submissions in writing overnight and go through those submissions tomorrow.

MR JUSTICE GOSS: That would be very helpful, Mr Bunting, thank you, yes. Certainly, as you are here and available, you should have the opportunity to do that and please do it.

MR BUNTING: I am very grateful. I think the preference that I am being asked to raise on behalf of the media is for us to deal with these matters today, if at all possible, given we are keen not to come back and trouble the court further tomorrow. If the court's strong preference is to come back tomorrow, we will be able to do so.

MR JUSTICE GOSS: It is. We will come back tomorrow, thank you.

MR BUNTING: I am very grateful.

MR JUSTICE GOSS: Thank you very much, Mr Bunting, thank you. Anything else then?

MR JOHNSON: No thank you, my Lord.

MR JUSTICE GOSS: The court will not be formally closed today in case there is a matter that arises that requires the court to sit. But it is not anticipated, unless either of you or any of you suggest otherwise, for there to be a further hearing of this case today, while those matters to which reference has been made this morning can be addressed. Thank you.

(A short adjournment)

(Discussion in Chambers)

(The court adjourned until 10.30 am on Thursday, 6th October, 2022)