

R v Lucy Letby

Summary of Day 1 – Tuesday, 4 October 2022
Discussion re the defendant's circumstances and fitness to attend

Date	Tuesday, 4 October 2022
Judge	Mr Justice Goss
Prosecution	Mr Johnson KC (team unchanged)
Defence	Mr Myers KC, with Ms Fiona Clancy newly added to the team following an order made at the last hearing
Press	Mr Jude Bunting KC, appearing for at least some press organisations
Nature of day	Procedural. No jury was sworn, no opening speech and no evidence were heard. The day concerned whether the defendant was able to take part in the trial.

Overview

Although this was the first day of the trial, the court did not move on to the substance of the case. The judge had convened the court to set the timetable for the first and following days. Before that could happen, the defence raised an urgent concern that Ms Letby's condition, following an abrupt prison transfer the previous Friday, left her unable to participate properly in the proceedings. The judge accepted there was an impediment to the case proceeding, ordered urgent enquiries with those in authority over her accommodation and care, and discussed arrangements for a further assessment of her mental state and for preserving the pool of potential jurors. A separate application by the media about reporting restrictions was put back to the following day.

1. Opening and representation

Mr Justice Goss apologised for sitting slightly late, explaining that he had a large volume of material to consider. He said it was important for the court to assemble on the first day of the trial in order to settle the timetable for that day and for the days to follow. Mr Johnson confirmed the prosecution team was unchanged, noted the addition of Ms Clancy to the defence, and noted Mr Bunting's attendance for the press. The Bar agreed that the first matter was an issue concerning the defendant, which Mr Myers addressed.

2. Defence concerns about Ms Letby's condition (Mr Myers)

Mr Myers handed up a short note together with a report (in the form of a letter) from Dr Louise Bowers, who had seen Ms Letby at very short notice the previous afternoon. The judge had not yet received it, and arrangements were made for it to be sent to him directly. Mr Myers said that this was precisely the situation the defence had spent months trying to avoid. His main points were:

- **The transfer.** On the afternoon of Friday of the previous week, Ms Letby was moved from HMP Bronzefield, where she had been for some time, to HMP New Hall in Wakefield. This was said to be around 45 miles from the court. She was moved without her possessions (not even a brush, toiletries or clothing) and without the support regime she had been given.
- **Her state.** Mr Myers described her as being in a dreadful state: disorientated, incoherent, unable to speak properly and, in the defence's view, unable to think clearly. That morning she had struggled to find the word "jury" and had barely spoken at all.

- **Contrast with before.** When the defence team last met her on the previous Monday, at the end of two years of support in preparing for the case, there had been a massive improvement in her ability to cope. Mr Myers said that progress had been "blown away" by the move.
- **Not directed at current staff.** The complaint was not aimed at those now looking after or accommodating her, but at those responsible for the wider arrangements for her accommodation and transport. The defence said they had been asked to make timely decisions repeatedly over the previous six months, and the judge confirmed he had seen the correspondence.
- **Travel.** Wakefield to Manchester and back was described as a three-hour round trip on a good day. That morning she was woken at 5.45 am, was to leave at 6.45 am and was due at court around 9.15 am, without having eaten or drunk. Mr Myers said it was unclear how much of this was her choice and how much a result of her condition, but that it was unsustainable for a six-month trial, particularly given her existing difficulties with eating, sleeping, resting, washing and communicating with her lawyers.
- **Not an attempt to avoid trial.** Mr Myers stressed that Ms Letby had been preparing for trial, wanted it to take place, and that the defence wanted the same. The concern was only that she should be able to participate properly, including in dealings with the jury, and should not be presented to a jury at a disadvantage caused by others.
- **What the defence asked.** That nothing beyond the barest formality should proceed that day, and that the court should not go forward until she had stabilised and re-orientated.

3. Professional assessments

- Professor Ireland, who had prepared earlier reports in the case, was to assess Ms Letby, but this could not be done as quickly. Asked how soon, Mr Myers did not know. Mr Johnson said it was not likely to be possible in the foreseeable future for reasons outside the parties' control, and the judge recorded that Professor Ireland was not available in the foreseeable future.
- Mr Johnson said Professor Ireland had communicated, having seen Dr Bowers' report. In light of that report, the prosecution raised no concerns about Ms Letby having seen Dr Bowers or about Dr Bowers' conclusions.
- After a short adjournment, the judge confirmed he had read the defence note, Dr Bowers' letter and Professor Ireland's letter. Mr Myers summarised Professor Ireland's short note: from a distance, she did not take issue with anything Dr Bowers said and broadly agreed with it. She made the practical point that it might now be necessary for a psychiatrist to assess Ms Letby, both for questions of medication and to consider her position generally.
- The defence said this seemed sensible, and that its instructing solicitor was already making enquiries about how quickly an assessment could be arranged.

4. The judge's ruling and directions

Mr Justice Goss concluded that there was, at present, an impediment to the case proceeding. He directed that:

- enquiries be made of whoever is responsible, whether the Director of the Prison Service or another person in authority with decision-making power, so that they are made aware of the situation;
- that person liaise directly with the judge about potential solutions for the defendant's accommodation for the duration of the trial;
- the immediate issues of her property, medication and general care be addressed;

- all of this be done as a matter of extreme urgency.

The judge acknowledged he could do no more than facilitate, and Mr Myers accepted that this was outside the control of the judge or the court establishment. Mr Johnson said there was an open channel of communication from a senior level in the police to the Prison Service, which the prosecution would pass on, and that he would try to obtain a name and number. Mr Myers added that some of Ms Letby's property was beginning to reach her, but a lot had not.

5. Jointly instructed expert

The judge asked whether a single, jointly instructed expert could assess the defendant's mental state, rather than each side instructing its own. He emphasised that this concerned only the ability of the trial to proceed, not its outcome. Mr Myers saw no reason why not and said the defence was as keen as the court and prosecution to resolve matters. Mr Johnson agreed in principle, subject to any issues that might arise later. It was agreed that the parties would need to define sufficiently focused parameters for the expert's task.

6. The jury panel

The judge noted that a large number of potential jurors were waiting, more than is often the case, and that all had indicated they could serve for six months. He wished to preserve the panel. Mr Johnson reported that around 300 had initially been available the previous day. Positions were:

- **Defence:** no specific proposals, but did not want to proceed with the jury until Ms Letby could be a cognisant participant. The work done to reach this stage with the jury should be maintained and potential jurors asked to attend as soon as it was likely the trial could go ahead. The length of time needed for an assessment would guide that decision.
- **Prosecution:** suggested keeping sufficient jurors to make a proper selection and releasing the balance.
- **Judge:** would release the balance but retain those who had indicated availability, who would not be needed that day or the next and would be on standby with their contact details left.

Both sides agreed. The judge added that it would be inappropriate to address any other items on the pre-trial agenda at that stage.

7. Media application on reporting restrictions

Mr Myers suggested that one matter could still be dealt with: the reporting aspects of the special measures, in particular identification issues, which had brought Mr Bunting KC to court on behalf of the media. The judge asked Mr Johnson whether he would submit anything in response to Mr Bunting's written material. Points covered:

- Mr Johnson said he could convert his notes into a short document by about 1.00 pm and have a hearing at 2.00 pm. The judge said a brief indication of the prosecution's response and the authorities relied on would suffice.
- The judge preferred to hear it the next morning, because he wanted to re-read the underlying material first. Mr Bunting was content, subject to checking with his solicitor. He noted that he had drafted his document without access to the witness statements in the applications, but now had them and could deal with them orally.

- Mr Johnson had compiled a bespoke bundle of all the applications and underlying statements, to be emailed to the judge. The judge said the large volume of documents on the digital case system made specific items hard to find. One subject of an application sat in a different section of the papers.
- Mr Bunting also referred to a second issue the court had raised: social media during the trial, which he described as involving separate authorities. He offered short written submissions overnight, and the judge welcomed this.
- Mr Bunting said the media's preference was to deal with the matters that day if possible, but the judge's preference was to return the next day, and the matter was put back accordingly.

8. Remote attendance

The judge reminded those present that the proceedings were being listened to in other locations. People in those locations were, for legal purposes, equivalent to being in the courtroom and were expected to behave accordingly. He asked that any technological or physical difficulty (such as being unable to hear clearly) be drawn to his attention at once, so that remote attendees were in as good a position as possible.

9. Close of the day

The judge said the court would not be formally closed in case something arose that required it to sit, though no further hearing was expected that day while the matters raised were being addressed. He would read the material and indicate through his clerk when he would return. The record shows a short adjournment and a discussion in chambers, and ends with the court adjourned until 10.30 am on Thursday, 6 October 2022. (During the hearing the judge had said the parties would return "tomorrow", so the transcript's closing date may reflect a later adjournment arrangement.)

Key outcomes

- No jury sworn and no evidence heard; the trial did not begin in substance.
- Judge found an impediment to proceeding owing to the defendant's condition following the transfer to HMP New Hall.
- Urgent liaison ordered with senior prison authorities on accommodation, property, medication and care.
- Psychiatric assessment of the defendant to be explored, with a jointly instructed expert favoured in principle.
- Panel of potential jurors to be preserved on standby; surplus jurors released.
- Media application on reporting restrictions and social media to be heard the following day.

This summary is based on the transcript of the 4 October 2022 hearing. Statements about Ms Letby's condition are the submissions of her counsel and the contents of the reports referred to; the reports themselves are not reproduced in the transcript.