

R v Lucy Letby

Summary of Day 2 – Thursday, 6 October 2022
Application re witness anonymity and special measures

Date	Thursday, 6 October 2022
Judge	Mr Justice Goss
Prosecution	Mr Johnson KC
Defence	Mr Myers KC
Media	Mr Jude Bunting KC, for nine media organisations: BBC, Sky News, ITN, Reach plc, Associated Newspapers, Guardian News and Media, Times Newspapers, News Group Newspapers and Telegraph Media Group
Nature of day	Procedural. Still no jury sworn and no evidence heard. The main business was the Crown's application for reporting directions for eight prosecution witnesses, opposed by the media. Judgment was reserved until the following day.

Overview

The court dealt with three agenda items: live tweeting of the trial, an extension of the custody time limit, and the eight witness applications. The judge also took an update on the arrangements for a psychiatric assessment of Ms Letby that afternoon. Most of the day was taken up by argument on the witness applications, with the Crown seeking orders under section 46 of the Youth Justice and Criminal Evidence Act 1999 and the media resisting them. The defence supported the media, but only on the point of witnesses' names. Judge Goss reserved his decision. Note that many parts of the transcript, including much of the detail about individual witnesses, are redacted, so this summary can only reflect what is visible.

1. The "Twitter issue"

Mr Johnson said there was a misapprehension that an application was being made by the Crown or the defence on social media. There was none: the court had invited the parties to raise foreseeable issues, and no issue had yet arisen. The judge set out his understanding of the rule:

- an authorised media organisation may live tweet, subject to any orders made;
- anyone else wishing to tweet about the proceedings needs the judge's permission;
- Mr Bunting agreed this reflected the criminal practice direction, and the judge also referred to the September update to reporting guidance issued by the Lord Chief Justice;
- responsible journalists know the reporting restrictions, so he saw no reason to prevent them live tweeting. The matter was put to one side.

2. Custody time limits

The existing custody time limit was due to expire on Monday 10 October. Mr Johnson explained that the limit stops running once the trial starts, and the trial starts only when the jury is sworn. The prosecution applied for an extension under section 22 of the Prosecution of Offences Act 1985, which requires good or sufficient cause and that the prosecution has acted with all due diligence and expedition. The need arose from the defendant's presentation that week. Mr Myers said there was no objection, though the defence cannot formally consent to such an extension. The judge found good

and sufficient cause, through no fault of the prosecution or defence, was satisfied the prosecution had acted with due diligence and expedition, and **extended the custody time limit to Friday 14 October 2022**.

3. Update on the defendant and the psychiatric assessment

- Following information passed to both sides by separate psychologists, a psychiatrist was to see Ms Letby that afternoon at the court. She was Dr Melanie Higgins, Medical Director at Ashworth Hospital, jointly nominated by both sides to produce a non-partisan report. The judge said this was what he had proposed at the previous hearing.
- Mr Myers said Ms Letby's condition was settling, as might be expected, and she remained keen to press on when she could, but the assessment was needed.
- Her property, including medication, which had not travelled with her at the time of the transfer, was now with her or reaching her. Mr Myers thanked the court for its communications on this.

4. The Crown's applications for reporting directions

What is sought. The Crown applied under section 46 of the 1999 Act for reporting directions for eight prosecution witnesses: a ban on publishing details likely to lead to their identification as witnesses. Two witnesses were also seeking other special measures, which the judge said he would deal with separately. The Crown submitted that the following were engaged:

- the defendant's right to a fair trial (Article 6) and the wider community interest in a fair trial, including the overriding objective in the Criminal Procedure Rules and witnesses giving their best evidence;
- the media's freedom of expression (Article 10) and the principle of open justice;
- the witnesses' private life rights (Article 8), which the Crown linked back to the quality of their evidence.

Concession on wording. Mr Johnson acknowledged that the pro forma applications wrongly sought a ban on any detail which "might tend" to identify the witnesses. The statutory test is whether publication is *likely* to lead members of the public to identify them. This mistake had also been made earlier in respect of other witnesses, mainly the parents of the alleged victims, in proceedings before Steyn J.

Background points. The Crown said the case was putting a significant strain on the Countess of Chester Hospital because many staff had to attend repeatedly over a long period. Witnesses feared publication would affect their mental health and ability to work, and that the case would generate exceptional publicity. They would be returning to court repeatedly over months, so the stress would be cumulative. Some 96 witnesses were estimated to give live evidence.

Legal test. The court must be satisfied that a direction is likely to improve the quality of the witness's evidence or their co-operation with a party in preparing the case. It must take account of the witness's views, and weigh the interests of justice against the public interest in not imposing a substantial and unreasonable restriction on reporting, with reference to section 52. Directions can later be varied or dispensed with.

The witnesses (as far as the transcript shows)

The witnesses are anonymised in the transcript and large parts of the descriptions are redacted. The visible information is:

Witness	Visible information
1	Described as a nurse who worked at the Countess of Chester at the time and no longer works there. Counsel for the media said she mentored the defendant. Details redacted.
2	Registrar at the hospital during the period in question; now a consultant paediatrician elsewhere. Also applying for screens. Said to have had severe anxiety for four years, to have an underlying medical condition worsened by stress, and to have two teenage children unaware of his link to the case. The Crown said material from the defendant's home indicated unrequited affection from her towards him, and that his wife was also the subject of intense social media interest from the defendant.
3	A consultant who still works at the hospital. Her concern is linked to media coverage of an inquest into a premature baby's death in 2014/15, and a fear that past unsubstantiated allegations would be dug up if she were named. Much detail redacted.
4	A nurse still working at the hospital. Details redacted.
5	A nurse still working at the hospital. Does not seek screens. Concerns referred to include colleagues discussing the case and strain on the team.
6	A nurse still working at the hospital, deeply concerned about intrusion. The Crown said a reporting direction would remove the press's motive to pursue her.
7	A nurse still working at the hospital. Short statement, details redacted.
8	A consultant who still works at the hospital. Details redacted. Counsel referred to a decision the doctor made on a particular day that may emerge in evidence.

Crown's response to the media's points. Mr Johnson argued in advance that:

- the media exaggerated the effect: witnesses could still be reported as, for example, "a nurse" or "a doctor who worked there at the time", so the evidence would not be unreportable;
- the cases relied on by the media (Lu and Guardian News and Media) were distinguishable. They did not concern the 1999 Act, concerned anonymity for parties or the subject of stories rather than witnesses, and had different purposes. Steyn J had accepted a similar distinction in her earlier ruling;
- section 46 asks whether the direction would improve the quality of the witness's evidence, which turns on the witness's perception, not whether their fears are objectively justified;
- the proper question was whether the restriction would be unreasonable, and granting directions gave the best chance of reliable evidence, which served the defendant and the wider community.

5. Defence position (Mr Myers)

- The defence is generally supportive of the media's position, but objects to a reporting direction only insofar as it covers witnesses' **names**, not photographs or similar details. No concession was made on any factual assertions in the statements concerning the defendant.
- Concerns about repeated appearances should be weighed against the fact that witnesses will still be giving evidence during the trial and are reported on in that context.
- Section 52(2)(a) refers to open reporting on matters of human health or safety, which is a feature of this case and may add weight to the public interest in knowing who the witnesses are.
- In reply, he argued that section 46(6) and (7) must be read together: reporting that a witness was at work when events occurred would not necessarily be likely to identify a specific person, given the many doctors and nurses involved. No order can guarantee non-identification, which is not the test.

- He said Mr Bunting could not both accept the witnesses' honesty and criticise the lack of independent medical evidence, and that statements must be read as a whole. He offered to help craft the terms of any order. On Witness 8, the defence said the court should not assume a particular feature will not emerge in evidence.

6. Media position (Mr Bunting)

Mr Bunting structured his submissions under three heads.

(a) Practical problems.

- Steyn J's earlier orders already prevent reporting of the identity of surviving alleged victims and their parents, and even the surnames of the deceased alleged victims. Journalists must use codes or acronyms, and eight more would make this considerably harder. He cited Kerr J in *Lu* on the "plague of initials".
- The eight are important to the jury and public: senior neonatal nurses and consultants who worked alongside the defendant, with relationships (mentoring, alleged obsession) relevant to credibility. Section 46(7) covers any place of work, so biographical detail would be lost, and witnesses returning on different dates could not be tracked as "Nurse A".
- The media said they would not call the case "sensational", as the Crown suggested; the word came from a case quotation and a PA Media email. It is important and emotive, which supports open justice.
- Relying on *Sarker*, he said open justice promotes public confidence, can bring new evidence forward, reduces uninformed speculation (for example, an unnamed consultant the defendant was said to be obsessed with), and encourages honest evidence from witnesses accountable in their own names. He asked why some nurses would be anonymous when the defendant is not.

(b) The standard.

- Reporting restrictions are exceptions requiring clear and cogent evidence and are measures of last resort (*Sarker*; *Re ITN*, which says any restriction should be limited to what is reasonable).
- He relied on *Scott v Scott*, *Khuja* and *Re S*: in *Re S*, no anonymity was granted despite psychiatric evidence of harm to a child, showing collateral impact is part of the price of open justice.
- He said Steyn J had applied, not distinguished away, the *Re S* and *Guardian* approach, and that none of the witnesses said they would refuse to give evidence under their own names. He disputed that Article 6 supported the Crown.

(c) The evidence. He said he was not challenging the witnesses' honesty or that giving evidence will be hard, but argued:

- they are experienced professionals, several with prior court experience, and section 46(4)(c) allows regard to profession;
- much of the distress described relates to being seen by the defendant, which screens address more narrowly. Statements merge the two requests, and none separately explains why anonymity is needed even with screens;
- worries about the press contacting families can be handled through IPSO and Ofcom complaints, and the court should assume fair, accurate reporting;
- with one exception, there is no independent medical evidence. He referred to *Rai*, where speculative evidence of PTSD failed to displace open justice;
- applications should be assessed individually rather than en masse. On individual witnesses, he said Witness 2's evidence was largely about screens and was of a kind common to senior professionals; Witness 3's concern relates to an inquest that may never feature in the trial, and no

complaint or online coverage of that inquest could be found; and the statements of Witnesses 4 to 8 contained generalities that would apply to almost any medical witness.

He ended by saying the media organisations would report responsibly, had engaged with the CPS (which briefed the press on the Monday), and that the orders sought were disproportionate.

7. Judge's questions and closing exchanges on the applications

- The judge asked how many live witnesses there would be. Mr Bunting said hundreds; Mr Johnson put it at 96.
- He noted that the online court list on Tuesday had anonymised the defendant's name, a matter to be clarified for the rest of the trial but not relevant to the decision.
- He asked whether account could be taken of what non-media people might do once an identity is public. Mr Johnson said the witness's perception is relevant under section 46(5) and the court should take a holistic view. Mr Bunting accepted that gossip is a reality, but said it does not justify anonymity and that there was no evidence fair reporting would cause the extreme harm suggested.
- The judge observed that several statements conflate the requests for screens and for reporting restrictions.
- **He reserved his decision and said it would be handed down the next day.** Mr Bunting need not attend and the decision would be sent to him.

8. Other matters and planning for the next day

- **Special measures.** The Crown said it was not arguing against special measures for the relevant witnesses; the issue was their nature. The judge said an early decision was better for anxious witnesses. This was to be dealt with the next time the court assembled, probably the next day.
- **"Back-to-back" argument.** This concerns when the defence experts should be called. The judge had the written argument and it could be dealt with the next day.
- **Jury.** Jurors were due to be summoned back the following day. The judge would know by then how far matters could proceed. If possible he wanted to identify a more limited group, for example about 25 potential jurors, to be preserved for the following week.
- The court would not be formally closed that day and the judge would be available if needed. The case was listed for 10.30 am the next day, with the defendant to attend.

Key outcomes

- Live tweeting: authorised media may live tweet, others need permission.
- Custody time limit extended to 14 October 2022.
- Joint psychiatric assessment of the defendant by Dr Melanie Higgins arranged for that afternoon.
- Decision on the eight section 46 reporting direction applications reserved until the next day.
- Special measures, the defence experts' scheduling and the jury panel to be addressed on the next sitting day.

This summary is based on the transcript of the 6 October 2022 hearing, much of which is redacted in respect of the witnesses. Characterisations of witnesses, and of the defendant, are the submissions of counsel and are not findings by the court. The outcome of the reporting-direction application is not recorded in this transcript.