

7th October, 2022

Submissions and Ruling on Special Measures, Prosecution  
Application to Amend the Indictment, Jury Matters, Defence  
Application Re Expert Evidence

Note: In the original transcript, some of the speaker labels and sub-headings were erroneous; these have been corrected and flagged with an asterisk (\*). Speech now labelled "PROSECUTION" was originally attributed to "MR MYERS", but appears to have been spoken by one of the Junior Prosecution barristers.

Friday, 7th October, 2022

MR JUSTICE GOSS: Yes.

MR MYERS: May it please you, my Lord, just by way of update before we proceed with the day's work, Ms Letby was seen by Dr Melanie Higgins yesterday afternoon. I will give your Lordship a verbal update, but a written report will be certainly with us by Monday. Dr Higgins was going to see if that could be achieved sometime today, but she believes that might not be possible. We will get the full report by Monday.

Just by way of summary, and this is verbally so the court is appraised and, of course, I have informed my learned friend about this, the salient points she has conveyed are that Ms Letby is fit to carry on. That will require monitoring. It is a situation that could change but she has not identified any underlying mental illness, nor did we expect her to do so.

The expression she has in the oral report that I have -- "oral", that is second-hand, it is not a report from the doctor; it has come through other channels -- is that her brain has slowed and it is, in effect, a short-term trauma. Her memory is intact. She follows what is happening in court and understands the timetable. Her mood is flatter than normal and the doctor will assess her again if matters require. She does make the observation that there will be a follow-up with the Cat A Team to see what can be done, where accommodation issues are concerned because, not surprisingly, she shares the concern that the travel alone, that arrangement, may be a problem that could have an impact.

In short, she is fit to proceed with the trial. There has been an issue, a short-term trauma which needs to be monitored to make sure how she is coping. I do not mean any discourtesy referring to it this way, but it is just so that your Lordship and everyone can follow. That is the position.

We do not have a written report, my Lord. What we would request is that matters proceed today as your Lordship had planned them

yesterday, with the identification of the panel of 25. I know that my learned friend will seek to amend the indictment at some point and we have no issue with that. That can certainly be done.

MR JUSTICE GOSS: That can be done today?

MR MYERS: Yes, the amendment can. What we would ask, my Lord, is so far as the jury and the indictment are concerned, we do not proceed beyond that point because, first of all, although we have the oral report, it is very brief. We would be grateful to have sight, given the background and the certainty of the written report, so we are absolutely clear about the situation with Ms Letby, not because we expect there to be any great deviation but at least to make sure that she is in the best condition she can be at the point of being put in the care of the jury.

On a different view, although it is a matter for the court, of course, once the panel has been reduced to 25, they will then have the weekend to consider what is to follow next. One would hope, at this point, anybody who can sit for six months will be ready to do so. Sometimes, as the point of selection draws closer and people reflect upon the position, reasons emerge that create a problem for sitting. It may well be I would not be thinking that way if it was not, at the same time, we see a benefit in Ms Letby have the weekend too; the two matters coincide. For that reason, I would ask the court not to go beyond that with the jury and the legal arguments that we have planned to deliver today.

MR JUSTICE GOSS: Thank you, Mr Myers. Mr Johnson, any observations?

MR JOHNSON: Not on the general progress, my Lord. Thank you.

MR JUSTICE GOSS: Certainly, I can understand why Mr Myers is prepared to do so much today but not go so far as the empanelment of the jury itself. I am just wondering whether it might be, out of an abundance of caution, worth identifying, say, 30 rather than 25. I do not think that is going to cause anyone any difficulty but it will, obviously, reduce the number significantly who will be essentially earmarked for serving as potential jurors in this case. Mr Myers, any observations in relation to that?

MR MYERS: No, my Lord.

MR JUSTICE GOSS: No. Thank you very much. We will do that. In fact, the panel will not all be assembled here until midday for reasons to do with admission to the building and the number of

people coming in and so on and so forth. What I would propose then, assuming there are more than 30 who say they are available to sit as jurors in this case, and there may be considerably more, to reduce it to 30, I would propose that, from those people who have all indicated no problem, there is a ballot that is undertaken by the Jury Officer who simply randomly selects 30 people from that body of 60, 70, however many there are. Are you content with that?

MR JOHNSON: Yes, my Lord.

MR JUSTICE GOSS: Mr Myers, are you content with that?

MR MYERS: Yes, my Lord.

MR JUSTICE GOSS: Then we will proceed on Monday, having identified the 30 who will return on Monday -- assuming 30, 29, 28 are still available -- from that, we will then proceed, having dealt with everything else that needs to be dealt with in relation to the commencement of the trial. We will then select 14 jurors from that body who will then be the jurors in this case, as is usual with these cases, but we then drop to 12 at the end of the opening. In other words, 12 jurors plus two reserves. We know what that is. Just so that people who are not familiar with the procedure, this is done very commonly in cases. Certainly in a case of this length it is done just in case, during the course of the opening, it becomes obvious that if any juror, that is one of the jurors numbered one to 12, cannot sit and then the reserves can substitute the vacancy in the 12. I am saying that for the public benefit, not for yours.

MR JOHNSON: No, thank you.

MR JUSTICE GOSS: Thank you very much. We will proceed on that basis then sometime after midday. That will be done and we will take matters in relation to the jury from there.

#### RULING ON APPLICATION FOR SPECIAL MEASURES DIRECTIONS

The first thing, unless anyone wants anything else to be done now, is for me to give my ruling on the applications for special measures directions, by way of reporting restrictions. The ruling is in writing, as I indicated that it would be. I shall hand down copies. Is there someone here from the media organisations who would like a paper copy of this? Mr Bunting is not here but there is no solicitor? No, there is no one. Very well. A copy can be sent electronically to Mr Bunting and, indeed, copies can be sent to the parties electronically but I thought that it would be helpful for you to have paper copies. There are two and one for the court, one for the media representatives. Do you mind just sharing one between you?

I will say it now. I am handing down my ruling, but the ruling is that I have granted each of the applications. At the conclusion of the ruling, I indicate that I shall circulate a draft order for consideration by the prosecution, defence and those representing the media organisations for their consideration. Then we will finalise the terms of the order after receiving suggested amendments. So, I will hand down now that. I have, perhaps, two copies. There are two; one each of those. There are three, one for each counsel. I have one more if anyone wants one.

(Handed)

You will see that this is just the text, not the formal part.

MR JOHNSON: Yes.

MR JUSTICE GOSS: The next --

MR JOHNSON: There are a number of things. We cannot deal with the jury now, can we.

MR JUSTICE GOSS: That is on hold, so we can fill in time.

APPLICATION TO AMEND THE INDICTMENT ON BEHALF OF THE PROSECUTION

MR JOHNSON: It is 12 o'clock. Perhaps I could apply formally to amend the indictment then in the terms that I have previously circulated as part of the agenda. I have just uploaded it to the indictment section of the Digital Case. It is at document B3. Other than the numbering of the pages, it is precise and the text of the document is exactly as previously circulated.

So that the press know and we can provide digital copies, should they require them, there are 22 counts. The reason for the expansion of the number of counts is, as I previously articulated at the hearing before your Lordship at the end of July, that so far as the attempted murder allegations are concerned, because of a fairly recent decision of the Court of Appeal, we had thought ahead to the directions that your Lordship was going to have to give to the jury if there was what, in effect, was a rolled-up count of attempted murder in relation to an individual child. Because of the complications that would create and because it would not be clear to the jury from the beginning as to precisely how the prosecution put in the case, if we used rolled-up counts of attempted murder, we thought the better course was where there had been multiple attempts on the same child to distinguish between the multiple attempts by having separate counts.

MR JUSTICE GOSS: And distinct occasions. So, it is not like, for example -- it is far removed and rare -- someone poisoning someone progressively. There may have been the administration of poison on a number of occasions over a period but it is the act of persistent poisoning that can then be rolled up.

MR JOHNSON: Yes. There is actually precisely that situation in this case, with the interim counts, where there remains a single count.

MR JUSTICE GOSS: Very well. Mr Myers.

MR MYERS: No observations, my Lord.

#### RULING ON APPLICATION TO AMEND THE INDICTMENT

MR JUSTICE GOSS: Thank you very much, indeed. I, therefore, grant leave for the indictment to be amended in the terms of the draft submitted by the prosecution and uploaded to the Digital Case System.

#### DISCUSSION ON ARRAIGNMENT

There will have to be arraignment.

MR JOHNSON: There will. It may be that the report has a...

MR MYERS: Yes. We are aware of that, of course, my Lord. What we ask, if the court can grant us this, is that that take place on Monday, when we have confirmed the position with the benefit of the written report from Dr Higgins.

MR JUSTICE GOSS: First thing on Monday.

MR MYERS: First thing on Monday. We have given the update we have and, in line with that, there should not be an issue. But these steps, having been taken against this background, it seems, with respect, prudent to us at least to see that report in writing before we take that final step.

MR JUSTICE GOSS: No problem, Mr Johnson?

MR JOHNSON: None at all, thank you.

MR JUSTICE GOSS: Thank you very much. So be it.

MR MYERS\*: My Lord, if the court is able and insofar as it is able, there are two matters, two applications to consider today. This may be a good opportunity to commence that with your Lordship's leave. The first is the question of special measures for those witnesses currently requesting them. The second is a

question in which the expert -- of the order in which the expert evidence is given.

APPLICATION RE SPECIAL MEASURES ON BEHALF OF THE DEFENCE\*

Taking the first of those, the special measures application, we are in your Lordship's hands as to whether your Lordship would wish my learned friend to set out the generality of those applications. A large number of witnesses have asked for screens. They are in the DCS and have been summarised. Your Lordship knows the defence position, included in the agenda that your Lordship has, is not to object to those; we do not and we understand the position. It is nuanced to this effect: which is it would be appropriate and better, if special measures were to be granted, that they be granted by way of live link rather than screens. The defence submit, respectfully, that the reasoning in the applications themselves, when considered particularly as a body, make that the preferable course.

The second point related to that is the question or, rather, the use of live link rather than screens would ensure there was no continuing issue with the defendant being able to see witnesses who she knows giving evidence, as they give evidence and how they give evidence, which is important to the defence. I just summarise the position so your Lordship has that.

It is a relatively brief submission from us and, my Lord, it is at page 15 of the combined agenda. I do not know whether your Lordship is working from DCS or hard copy.

MR JUSTICE GOSS: I am working from both.

MR MYERS\*: It is on the DCS as document Q121. If your Lordship has the hard copy.

MR JUSTICE GOSS: I am going to have to go onto the DCS to consider the individual applications. I will do that now.

(Pause)

MR MYERS\*: Section Q but the agenda is item Q121. The submission we make on this particular issue is to be found at page 15 of that document. (Pause) I am assisting, if I can, with the DCS pagination.

MR JUSTICE GOSS: Ms Clancy helpfully directed me just at the moment. (Pause) It is going to be quicker to work from the paper copy.

MR MYERS\*: It is DCS page Q1275, but it will probably be easier to use the paper, we agree, my Lord.

The summary, I should say, of all the measures sought is helpfully set out by the prosecution. In fact, at pages 11 through to 13 your Lordship will see it.

MR JUSTICE GOSS: Yes.

MR MYERS\*: That summarises them. The points we make are of general application.

MR JUSTICE GOSS: Thank you.

MR MYERS\*: It is a consistent theme of the applications, variously expressed by these witnesses, that a principal anxiety is that associated with coming into court and being seen in court. Reference is also made to being seen by the defendant, or being seen by other members of the public or the defendant's family. But it centres around the anxiety associated with coming into the courtroom. It is expressed in different ways by different witnesses. We have identified in paragraph 5 on page 15 witnesses who illustrate it most clearly. I do not propose to go through all of those, my Lord, but you will see we cite applications by [REDACTED]. They are only four.

The type of concerns the witnesses have, expressed, for example, by [REDACTED] in her application, which, as we cite in the written material, is at DCS document Q66, is that she would like screens to be placed round her for the duration of the time she gives evidence. She feels a screen will ensure that her anxiety is reduced, giving clear and concise evidence and she will not be overwhelmed by the amount of people in the room and being the focus of everyone's attention. It will help her to concentrate. She goes on to describe other problems that she has in association with that.

I am not going to go through and read all of these. It is possible to draw emphasis from one statement or another one. One of the witnesses talks more about concerns about being seen by the defendant. Another one will talk more about the concern of coming to court and generally being seen in public when they give evidence.

If we accept, as for the purpose of this application we do, the content of those, we observe it is difficult to see how, in many cases, screens really can adequately address the concern of the witness insofar as they will still have to come into court, they will know it is a public place. They will be able to see and be seen by a significant number of people, whether that is the jury and the lawyers in the case and your Lordship or others. So, those things which are triggers to their anxiety and which they

say cause them concern are not really alleviated by screens. Or, if they are, only to a minimal degree.

At the same time, it remains the position of the defence, my Lord, that, for the defendant, Ms Letby, to be deprived of the opportunity to assess the way in which evidence is given by people, with whom she is familiar, and for that not to be something that can be conveyed to her legal representatives, as well as giving her the opportunity to receive the evidence in the best way is a serious and significant disadvantage in this case, particularly where many of the witnesses are linked with one another.

We recognise the anxiety of the witnesses. We do not accept, my Lord, there is any objective basis for any concern as to intimidation. We understand, in a general fashion, how people giving evidence may be anxious about giving evidence against somebody they know or they do not know. Of course, we understand that. Nobody is suggesting this is a case where there are concerns relating to intimidation in the sense that courts are most concerned. Nor is it really case where there is a prospect of defence supporters in a large way. There are family members, her mother and her father who will or may be in attendance, accompanied by a couple who are friends; that is it. It is not one of those cases where there is a large group of people who may present an intimidating presence.

MR JUSTICE GOSS: No, it is not physical intimidation; it is intimidation of circumstance, essentially.

MR MYERS\*: It is intimidation of circumstance, yes, and it is the word that they use to describe the pressure they feel and the anxiety. We submit, therefore, that if there are to be special measures, and we do not say there should not be, the special measure that meets what these witnesses are most concerned about and does so most effectively, as it happens, and allows the defendant to see those who were giving evidence against her and, crucially, the way in which they do that, is that they do so over the live link, as the court can direct in accordance with section 24 of the Youth Justice and Criminal Evidence Act 1999.

That meets those concerns. We also make what we regard as a practical observation in this case. That is that there are an enormous number of special measure applications with witnesses asking for screens. We understand this is not the principal concern in assessing these. But where the court is considering two alternatives, it is not irrelevant but the whole process of bringing screens into court intermittently and may be repeatedly with witnesses over and over again, with the rearrangements in a courtroom particularly like this, is the more undesirable if

there is a practical alternative to that. A live link is immediate, it creates no or little logistical problem in the same way for the court and there is no issue with the defendant being unable to see the witnesses, as well as going directly to their concerns. We appreciate the attraction and the desirability of witnesses coming into court. We know that and we understand and the prosecution will be concerned about that. We recognise that concern. Many witnesses will be coming into court. Those who seek the protection of special measures, we submit, therefore, can proportionately and adequately be dealt with by use of a live link rather than screens. That is what we say about that.

MR JUSTICE GOSS: Thank you very much. Mr Myers.

SUBMISSIONS ON BEHALF OF THE PROSECUTION\*

PROSECUTION\*: My Lord, I was hoping to deal with, just as my learned friend has, the application generally, rather than descending into each specific application because of the unusual circumstances that the defence accept, in principle, special measures; it is just the measure, in particular, that seems to be in question.

MR JUSTICE GOSS: Indeed. There is no suggestion that the criteria for the making of a special measures direction are not met. The only issue is the form of the special measure.

PROSECUTION\*: May I deal with that general approach on behalf of the prosecution. There is no application for live link from the Crown. The applications are specifically for screens. If it reassures my Lord and the defence, I have checked this morning with the officers. In each and every case it is the witness' choice to ask for screens, as opposed to live link. Those concerns which the defence understandably raise about whether it generally addresses the concern, we can reassure everybody that it does because that is the witness' choice; they would prefer to come into court and be behind the screen rather than on a live link.

MR JUSTICE GOSS: That is a specific statutory consideration, is it not, the wishes of the witness.

PROSECUTION\*: I have checked. They have been taken into account. The link has been declined on each and every witness' part.

We submit that, with that in mind, it is the most effective special measure because the court's concern is, if I can steal the phrase from my learned friend Mr Johnson, KC, yesterday to maximise the quality of the evidence. This is the measure we say maximises the quality of the evidence far better, because the

defence anticipates to have, if the witness feels able, the witness in court, seen by the jury, assessed by the jury under cross-examination and for them to make that assessment first-hand, rather than the potential obstacle of a live link and a live link is not sought. There is no need for that potential obstacle to be there.

Of course, the concern as to the defendant not seeing the particular witness is set out fairly. Of course, in every case, particularly for those of us at the junior Bar who see it even more regularly, screens, while never a routine measure or taken for granted, are not an uncommon measure. It is not a difficulty, in fact, in practice because, of course, everybody who sees the witness, we would say, gets to see the witness.

MR JUSTICE GOSS: Whoever needs to see the witness apart from the defendant.

PROSECUTION\*: Apart from the defendant but that is accommodated. Of course, forgive me, because of the narrow issue, I have not put anything in writing, but the Act envisages that being the case because, of course, it sets out you must see the witness. Section 23 of the Act sets out, "You must see the witness when the screens are granted". So, it is envisaged that it is accommodated by the legislation itself.

In all the circumstances, we say it is the witness' choice, it is the best measure, it is the most effective measure, it provides the best evidence. Live links are not the application. It is an unnecessary obstacle to the jury's task and the concern expressed by the defence can be adequately accommodated and envisaged by the statute. There is no need to depart from the applications in each of these cases. There are, I should add now, 16 applications because two of the witnesses have been subsequently agreed. That is on the table.

MR JUSTICE GOSS: There are 16 applications.

PROSECUTION\*: Yes, it is incorporated in the table that my Lord has already been directed to. For the record, it is [REDACTED] and [REDACTED], who originally applied but have subsequently been agreed.

MR JUSTICE GOSS: Yes, it is indeed on the table. They are marked as no longer required.

PROSECUTION\*: Unless my Lord wants me to go into any individual detail or add anything to what I have already said, they are the submissions on behalf of the Crown.

MR JUSTICE GOSS: Thank you very much. Is there anything you wish to say in response to Mr Myers?

MR JOHNSON: No, my Lord.

MR JUSTICE GOSS: Thank you very much, indeed.

#### RULING ON SPECIAL MEASURES

MR JUSTICE GOSS: There are before the court 16 applications for special measures directions in relation to 16 prosecution witnesses. It is not in issue but that the criteria for the making of a special measures direction are met in each of their cases. The issue that is controversial relates to the form of the direction to be given. Each of the applications is for special measures by way of the witness being screened from the defendant and other people in court.

The defence submission that it is more appropriate, in the circumstances of this case and on the material within the applications that each of the witnesses, should they be afforded a special measures direction, should give their evidence by way of live link. There is no such application before the court. Each of the witnesses has indicated that they want screens and they do not want live links. One of the statutory considerations in relation to the granting of a special measures direction is to take into account the wishes of the witness. Although it is not determinative, it is obviously a significant factor in relation to each of the applications.

The defence also advance or submit that the advantage of the witnesses giving evidence over the live link would be that the defendant would be enabled to see the witness giving evidence, as well as hear what the witness says. That is true. However, the situation of the defendant, provided the trial remains fair and appropriate. It does not assume significance such that the applications should be rejected and the only special measure forwarded should be one of the witnesses giving their evidence by live link.

Accordingly, I am satisfied that each of these applications is appropriate and should be granted and they are granted.

So far as the mechanics of it are concerned, I am quite satisfied, because we all have a great deal of experience now, of the court staff being able to assemble in very short order. It will soon become routine. The jury, I have no doubt in due course, will, as juries are, be directed at the time and, indeed, before they retire to deliberate upon their verdicts that they ignore the presence of screens in court. So, all those measures will be adopted. Thank you very much.

MR MYERS: I am sorry to interrupt. Dr Higgins' report has just arrived and it may be a good idea for us all to read it.

MR JUSTICE GOSS: We will have a break. It will also give me an opportunity to cause my ruling to be sent electronically to you and to Mr Bunting, so that he can have it. I do not know if he is engaged on something else today but, no doubt, he will want to read it and consider it, as will you.

MR MYERS: May I just confirm one matter, my Lord, when we deal with the question of the expert evidence, I have just put into one relatively short pdf bundle some of the statements that are on DCS, the expert statements, to which I would like to make reference, just by way of illustration of some of the points I make.

Can I confirm whether your Lordship has received that. If it has not reached your Lordship yet, I know that Ms Clancy will send it directly to your Lordship.

MR JUSTICE GOSS: Would you, please, Ms Clancy. I may or may not. I am not sure what I have.

MR MYERS: We will do that. It is just for reference. It does not set out a fresh argument or anything like that. It is just something to turn to rather than going through DCS. It seemed helpful to have them there.

MR JUSTICE GOSS: It is much more helpful, certainly for me, but I think probably for most people.

MR MYERS: You are not alone, my Lord. Thank you.

MR JUSTICE GOSS: Thank you very much. That is a convenient point. I will cause this ruling to be distributed to you electronically. I will take the liberty of correcting the repetition in the very last paragraph in relation to the consideration of the draft order. Perhaps consideration could be given to the draft order as well today so that we can finalise that order. It is not imperative it is finalised today but at least it can be dealt with.

Insofar as the order of expert witnesses is concerned, we will deal with that after we have dealt with the jurors.

MR MYERS: Very well, my Lord.

MR JUSTICE GOSS: Thank you all very much. Would you take the defendant from the court, please.

(A short adjournment)

A panel of 30 has been selected from the residual. There were, as expected, people who came back with reasons where they could not, which I went through -- from 61. So, there will be 30. Thank you for the corrections, Mr Myers.

MR MYERS: I am grateful for the assistance of Ms Clancy as well.

MR JUSTICE GOSS: Thank you. Thank you for the draft amendment. I have sent one back, which has changed it, but I am not saying that is definitive. It is for consideration.

MR MYERS: Thank you. Mr Bunting got back to me and wants to speak to me about various things, which if we can resolve them between us, we will, and we will revert to your Lordship for approval.

MR JUSTICE GOSS: That is what I thought would happen.

MR MYERS: Thank you.

MR JUSTICE GOSS: We will leave that. It is not so urgent.

MR MYERS: As long as some form of an order is in place, when I open it.

MR JUSTICE GOSS: By Monday morning.

MR MYERS: Can I just deal with the issue that was raised by my learned friend about arraignment. I cannot remember whether your Lordship had been allocated to the case or not at this particular stage of its long progress up to this stage. There was a stage when Ms Letby was arraigned unexpectedly and it caused various issues with families who wanted to see that and had been told that nothing significant was going to happen at this particular hearing.

MR JUSTICE GOSS: I was not involved in that.

MR MYERS: No, I did not think so. That caused ructions which we did not foresee, frankly. So, in that sense, it was our fault for not anticipating that might cause a problem. The families are not here because they had understood that all that was going to be dealt with was special measures. Could we ask that arraignment is put over until Monday, when people will be in attendance, please.

MR JUSTICE GOSS: I thought we were going to do that anyway.

MR JOHNSON: We were. The reason that arose because the report from Dr Higgins makes it plain that Ms Letby is able to proceed. It refers to the fact that she wishes to do so as quickly as she can. We have made that quite plain to the court. The issues we have had are nothing to do with a lack of readiness to proceed; it is just the capability. She is certainly ready to proceed to being arraigned as soon as the court wishes. But we understand, in the circumstances, that may be better on Monday morning.

MR JUSTICE GOSS: I think we will. I should add thank you very much for Dr Higgins' report, which I have read.

MR MYERS: Yes. That takes us to this point. We are grateful that she dealt with it so rapidly.

MR JUSTICE GOSS: Yes, so am I. I will cause the court to acknowledge that and to thank her very much.

MR MYERS: Thank you, my Lord.

(The jury panel enter into court)

MR JUSTICE GOSS: All members of the jury panel have been brought into court. I appreciate I have got you on both sides, as I look at the courtroom. Thank you very much for your involvement thus far in relation to the trial process and the performance of jury service. I appreciate that you have now been involved, not continuously, from Monday of this week. Thank you all for completing the questionnaire that you were given and for your answers to that.

We have now reached a stage whereby you, as a group of 30, are all as, we understand it -- that is the court -- available to perform jury service for a period of up to six months from today, subject to the breaks that I indicated in the questionnaire, and that you have no connection with anyone or any place concerned with this case. In particular, you know nothing about the defendant who is Louise (sic) Letby, who sits there in the dock in the front row with the long hair. I will just check. It is highly unlikely that you will know her but that is her. I will just check that none of you -- Lucy Letby, sorry. I apologise, Ms Letby, for misnaming you. Lucy Letby, I am sorry. No one has any knowledge or believes you have any knowledge. All the answers that you gave in the questionnaire still hold? No difficulties with employers? No difficulties with family members? Nothing at all.

A MEMBER OF THE JURY PANEL: I have not asked my employer.

MR JUSTICE GOSS: You have not? So, your employer does not know the prospect that you will be away from work. Well, as far as

you are concerned, would you check at the end of the hearing this morning with your employer and confirm there is no difficulty.

A MEMBER OF THE JURY PANEL: Yes.

MR JUSTICE GOSS: Thank you very much. In fact, we are not going to go that much further today. I am about to explain what is going to happen. If you could, please, because I do not want there to be a difficulty further down the line, when you say to your employer, "By the way, I'm not going to be available for work for six months".

You remain a group of 30. Some of you may have performed jury service before. If you have, you will be familiar with the procedure. Juries are, conventionally in England and Wales, comprised of 12 jurors. However, at the start of this trial, I will be selecting 14, that is 12 jurors and two reserve jurors. That process will take place on Monday morning. The remainder of you, which is the remaining 16, will not be required. At the moment, potentially you are going to be a jury in this case but that will be determined on Monday morning. So, all of you will have to come back on Monday morning.

You know something about this case from the questionnaire. It is vital that you do not discuss anything to do with this case with anyone and that includes family members, close friends or anyone else with whom you come into contact. Certainly, you do not discuss it with each other. When you assemble here on Monday morning, there will be other jurors in the jury assembly area. Do not discuss it obviously with them because you have an embargo on discussing anything to do with this case with anyone.

Do not conduct any research by any means into anything to do with this case. You may already have known of it from earlier media reports but do not now, because you are potential jurors in this case, conduct any research by any means into anything to do with this case. The jury, in due course, will try this case on and only on the evidence that is placed before them in this court. That is obviously going to take a long time.

I hope you understand that. It is all to do with what we call the integrity of the jury system. That is the system whereby jurors are only trying the case on the evidence that is placed before them and reach verdicts on the evidence that is placed before them and on nothing else; other people's opinions, other material they may find by researching into issues that arise in the case. Similarly, conduct no research into anyone involved in this case, be they advocates or myself. It is very tempting in modern life -- a lot of people virtually live their lives over the internet and the media that is available over the internet.

So far as this case is concerned, no research about anyone or anything to do with this case. It is simple and straightforward.

Thank you very much. If, between now and Monday, it becomes apparent that there is a reason whereby you are not able to perform jury service in this case over the prolonged period that it is likely to take, please bring it to the attention of the Jury Officer on Monday morning. That is why I have 30 of you and not a smaller number from which to ballot. There will then be a ballot of all of you available to select 14, 12 plus two reserves. I hope you all understand that. It is all simple and straightforward.

Unless counsel wish to raise anything else? No, thank you very much, indeed. That is it for today. I am sorry this has been a prolonged process but it has to be done in this way and I am doing everything I can to ensure matters are carried out, first of all in accordance with the law, which is the most important thing. Secondly, so that you are kept in the picture and you know what the situation is.

That is it for today. Thank you very much, indeed. I shall see you -- not all of you, but at least the very great majority of you on Monday morning. Can you be here, please, ready to proceed by 10.30 am on Monday morning. The Ushers will now attend to you and give you any further instructions that have to be given. Thank you very much, indeed.

(The jury panel withdrew from court)

Mr Myers, are you ready to move on to the expert evidence?

MR MYERS: My Lord, yes. I anticipate it may take us both sides of lunchtime to deal with this issue because there is a little detail that I need to go into to present what we have to say about this evidence and why it is.

MR JUSTICE GOSS: There is no pressure of time.

MR MYERS: Thank you.

MR JUSTICE GOSS: We shall have a break anyway. I have some other matters to attend to during the luncheon adjournment, in any event. We will certainly be breaking off in 15 minutes in any event. I have to; I have a commitment.

MR MYERS: Of course. I can introduce the matter at this point and then make a start on what we have to say.

MR JUSTICE GOSS: Just give me a moment to arrange things.  
(Pause) Yes. Sorry, Mr Myers.

## APPLICATION RE EXPERT EVIDENCE ON BEHALF OF THE DEFENCE

MR MYERS: Thank you. The issue to be determined, my Lord, is whether the defence experts are heard back to back, if I put it that way, with the equivalent prosecution experts as we proceed through the case, so far as practicable, or whether they should be presented as a body at the conclusion of the defence case.

The submissions that have been provided are all included within the agenda that your Lordship has. The original defence application commences at page 35. That is followed in that bundle by a preliminary prosecution response at page 40 and then a full response by the prosecution at page 42.

MR JUSTICE GOSS: Yes and I have those documents in front of me.

MR MYERS: By way of introduction, we make these observations before I move to the arguments set out. The principal evidential terrain in this case is the expert evidence, the expert medical evidence. There are other areas and there are other issues. However, without a doubt, it is preeminent in the case and it is an area of real substance; it is complex. By the standards of any case ordinarily before these courts, it is vast.

Additionally, by this stage of the proceedings, it has become heavily inter-related between prosecution and defence. That is something that I will elaborate upon in the submissions that I make. But we have really moved well beyond a point of discrete reports prepared in isolation of what the other case is. Now, there is a great deal of correspondence evidentially between the experts.

The experts with whom we are principally concerned in this application, my Lord, are the following, just by way of summary. These are the experts whose opinions are the most controversial in the course of the case. For the prosecution, Dewi Evans, consultant paediatrician; Sandie Bohin, who is a consultant neonatologist and paediatrician; Andreas Marnerides, who is a forensic pathologist and histopathologist; and Owen Arthurs, who is a paediatric radiologist.

Drs Evans and Bohin are involved on every count in this indictment. That does not apply to Dr Marnerides because the nature of his work is that he applies to seven of the counts on the indictment. We hasten to observe this, so far as Dr Marnerides, forensic pathologist is concerned: his evidence, as a rule, is nothing like as detailed as that of the paediatricians and the neonatologists because he is not occupied with what is sometimes the complex and lengthy clinical histories of these babies. There are other witnesses who will

feature at various points, either agreed or in evidence. But those four are the key witnesses who could be described as controversial in a forensic sense.

For the defence, in the same vein, Dr Michael Hall, who is a consultant neonatologist; Dr Mohammed Rahman, who is a consultant paediatrician; and Dr Katharine Halliday, who is a paediatric radiologist. Just as with Drs Evans and Bohin, Drs Hall and Rahman have prepared reports and are involved in every count on this indictment. Again, there may be reference to others but not in the same controversial vein. Your Lordship will appreciate already, from acquaintance with the case, that the forensic medical experts, as a body, occupy many hundreds, if not in fact thousands of pages of evidence in this case. There must now be in excess of about 200 statements or reports, well in excess of that.

The approach of the courts with regard to expert medical evidence is to present it for the jury in a way that it is as logical as possible and as simple to follow as practicable. "Simple" may not be the word really in this case but it has to be presented in a logical way and the jury given as much assistance as they can be given to follow it. It is not an area where, for example, whatever forensic advantage may accrue to one side or another, we respectfully observe, should dictate how to proceed.

The authorities with which the court will be familiar but those authorities that have dealt with cases of child deaths and which exhort the courts to take an approach that is logical and pieces this material together, we note usually involve one or two or three events. That benchmark of being logical and simple to follow has been set against them. This case is dealing with 17 babies and 22 offences. It is a case where there are competing opinions across numerous complex issues. The fundamental concern, we suggest respectfully, is that the evidence will be presented in a way that is logical and co-ordinated as practicable if the jury are going to be able to follow it across the entirety of the evidence.

Therefore, my Lord, we say two things follow from that in support of the submission we make, which is that this should be back to back so far as practicable. The first is that it is necessary for the medical experts to deal with the same counts on the indictment, the same children, and the underlying medical evidence and witness evidence which is substantial for each one as it is presented as part of a whole, consistent with that count or that child that is being considered. It is all co-ordinated, so the jury have all of that material, so the experts have all of that material. It is proximate to the live evidence

that is given. It is proximate to the admissions when they are read out.

The second important aspect of hearing them close together is that, crucially, given that there are conflicts in opinion, it is important, we submit, that competing opinions are heard close in time to the evidence that it relates to. Also, we foresee in that vein that, insofar as opinions or issues develop in this case, that can happen with the experts simultaneously, rather than, for example, the prosecution experts giving evidence on each count, matters being raised, reference being made to what the defence experts have said without them even giving evidence at all, as they would have to be put to those witnesses. Then the whole process being repeated at the end of the case with expert witnesses for the defence giving evidence. Almost certainly in this case, as matters have advanced, competing contentions across each section of the case, each baby, if that is how we proceed.

There may be adjustments in position to take account of the way the issues develop. It is almost inevitable there will be and that is a process that must, we submit, respectfully happen in a synchronised and co-ordinated way across the experts; not something which is impeded. We say it is important and we say that, to adopt an approach where one side is giving all of this complex evidence at the conclusion, in effect, or towards the conclusion of the case and distant from the substantial evidence to which it relates, is unhelpful to the jury and, we respectfully suggest, to the court. It is impractical and, we are compelled to observe, potentially deeply unfair to the defendant.

The defence case depends on the same medical evidence as the prosecution case. The defence experts, as I will briefly show your Lordship when we turn to this, deal with the same issues in detail. In these circumstances, it is not, we submit, correct to approach it as if one side or another owns the underlying evidence and their experts should have some type of enhanced access to it during the court process. Both sides need to be able to give their evidence by reference to their underlying evidence from the witnesses and it is agreed.

My Lord, I will make a start, at least, on some of the details set out in the submission. I see it is just 1.55 pm. Unless your Lordship were to rise here, it may be a good point.

MR JUSTICE GOSS: I think, rather than starting and breaking off, Mr Myers, that is a natural breaking point. Thank you very much. 2.00 pm then?

MR MYERS: My Lord, yes.

MR JUSTICE GOSS: Thank you. Mr Myers, Mr Johnson, the two representatives from the media groups are still here. Are you liaising with Mr Bunting? You are. As far as I am concerned, if there is no problem with counsel, I have no difficulty with your speaking if you wish, because you will understand the practical difficulties in relation to these matters. It is entirely a matter for you, unless they object to it and they would rather just go through Mr Bunting. The point here is to strive to reach an agreed position. That would be very helpful from my point of view. Thank you very much, indeed.

(The short adjournment)

MR MYERS: To assist with timings, my Lord, I have given an estimate of 30 minutes. It is conceivable it could nudge towards 40 but I will not extend it unnecessarily, but in that region. I said 30, but it may be 40 and my learned friend may be 15 or 20.

MR JUSTICE GOSS: Thank you. It is only for other purposes.

MR MYERS: I understand.

MR JUSTICE GOSS: There is no pressure of time. (Pause) It is an opportune moment. What we can discuss in the absence of the defendant is the general timetabling. Perhaps we could just touch on that at the end of today, about hearing days and that sort of thing. This has prompted me to raise that.

MR MYERS: May it please my Lord, if I can continue the submission I began before lunchtime.

MR JUSTICE GOSS: Yes, Mr Myers.

MR MYERS: Both parties recognise, of course, that it is for the court to decide how best to approach this issue and both prosecution and defence recognise that the case management powers of the court and the Criminal Procedure Rules enable your Lordship to decide how to approach this; so, it is very much a matter for the court.

The first matter that I am going to deal with, which is at page 36 of the bundle and agenda, is the question, as the defence would put it, why it is that all expert medical evidence should be heard as part of the relevant evidence in the case generally. By "relevant evidence" we mean the evidence given in the course of the prosecution case.

The nature of this evidence which, in the case of each child is substantial, detailed and complex, is such that it is necessary, the prosecution have found and the defence agree, to proceed in

a staged basis. At each stage, the relevant witnesses, facts, electronic presentation and the like will be presented to the jury. That is, if certainly the parties took the view with the assent of the court, the best, if not the only way of dealing with this. The defence agree with that. The prosecution will call their medical experts as part of that process and they will be able to give their opinions by reference to the extensive presentation of details, as it is ongoing and as it is fresh in the jury's consideration for that child on those counts.

That will assist the jury, pre-eminently, to relate the expert evidence they hear to the relevant evidence in the case and there is a lot of it in each count. The projection is for about a week. I should say there is a lot of it in the case of each child, about a week. Some may be a little shorter and some may be longer. But that will assist the jury, principally, to proceed through this logically and integrate the material. It may well assist the court in that regard in marshalling the salient aspects of the evidence. I make that submission respectfully. It will certainly assist the prosecution experts, in the giving of their evidence, that they can refer to the matters, as they sit in court, having sat in court listening to them. They can refer to those matters and they will be within the recent contemplation of everybody, as they give their evidence.

On this aspect of the submission, we propose, respectfully, that the defence medical experts must surely be in the same position. They need to be able to refer their analysis and their conclusions to the same relevant medical evidence in a way that is readily comprehensible to the jury and efficient. One consequence of the defence experts being sent to the back of the trial is conceivably we would have to, to some extent, go through the same process again if we wished to ensure that the jury have the salient material in their contemplation when they hear the expert evidence, and if we wish the experts to have the ability to refer to material that has recently been put before the jury and the court for that purpose.

We submit the better and the appropriate course is for the defence experts to give their evidence as close to the time that the corresponding prosecution experts do, as they can, as would be conventional in nearly every other or most other trials and ones that are a good deal less complex than this one.

My Lord, we have a short bundle of documents taken from the material available. There are bookmarks in it if your Lordship's computer will open those. You will see there are six documents within that pdf.

MR JUSTICE GOSS: You are saying there is a pdf in...

MR MYERS: There should be a pdf that was sent by Ms Clancy to your Lordship this morning of Letby. It says, "Letby, statements re expert evidence".

MR JUSTICE GOSS: Yes, that is it. Yes, that is it. I have it.

MR MYERS: The bookmarks assist but, in any event, they are paginated in red at the foot of each page and I can work off the pagination. I am just going to start briefly, briefly with Dr Hall's statement relating to [Baby A]. The reason I go to this is that, while your Lordship will have seen on the DCS, there are corresponding statements for defence experts, as there are for prosecution ones, it is helpful -- the focus up to this point, I anticipate, with the material provided having been the prosecution experts pre-eminently, it is helpful just to consider what is contained in these reports. These are not small documents. I have here a file of most of them, not all of them, just for Dr Hall. There is more than this; a similar file for Dr Rahman combined for Dr Halliday. It is immensely detailed by reference to the evidence that they will be talking about.

Just to give your Lordship the general structure of Dr Hall's reports, and they are a lot longer than Dr Rahman's -- Dr Hall will be here during the case and we anticipate in court, present for most of it. They follow largely the same pattern. Could I ask your Lordship to go to page 2 of that pdf. Your Lordship will see the index, conventional fashion, but Dr Hall, on each occasion, deals with these topics. In particular, when considering the question of having his evidence close to the actual evidence that it relates to, your Lordship will see item 5, chronology, relating to the particular child; an overview of the prognosis and condition and care. Part 7, the reported clinical observations at the time of collapse. Part 8, possible causes.

Then, going on to consider the prosecution experts and a point I will develop shortly about the way in which these experts' evidence was initially, to some extent, from Dr Hall's point, inter-related and now most definitely is inter-related after the joint reports. Even in these reports, there is consideration of the prosecution experts and then the opinions of Dr Hall, concerning the cause of death.

If I could take my Lord forwards, just in that report, to page 11 and, in fact, the pagination matches the page counter at the top of the pdf here; we are not out. It is page 11 at the top will take us to page 11 in the bundle. This is one page of what are many hundreds of pages of reports. Merely by way of example, to show, if we just go to, for example, paragraph 5.1.11, next to line 305 in the centre of that page, a very detailed

consideration of the evidence or of material relating to a witness called Dr Harkness. The substance of this is not something I need to go into at the moment, but the reason I am going to this, my Lord, as you will see at the end of that paragraph, the reference J1065, which takes us to the relevant page. At the end of the next paragraph, a reference to Dr Harkness' statement, I639. If one goes over the page, to the top of page 12, a reference to issues relating to resuscitation drawn from Dr Jayaram's note at J1068. That is part of one page. While, of course, as one scrolls down this page, your Lordship will see this pattern continues; it is a very thorough piece of work and they all are, as would be appropriate for him approaching it as a neonatologist in this fashion.

That continues as we go forwards into an analysis of the nursing care; all of that by reference to material that will form the evidence in this part of the case. It is closely linked to the material in Dr Hall's report, in particular. If one goes further into the report and comes to page 18, "Possible causes of collapse and death in this instance". Dr Hall considers the prosecution evidence and the evidence of the prosecution experts and then specific alternative causes. A specific example, if your Lordship goes over the page to page 19, following the pattern often followed by Dr Hall, it will be an analysis or comment upon what the prosecution experts have said and his own contribution. If one looks at 8.2.1.3, just above line 575, when dealing with whether or not hypoglycaemia can account for what happened, he makes reference to one of the items in the nursing notes at J1082.

Two paragraphs down, 8215, when dealing with what Dr Evans has to say, he makes reference to Dr Evans and the part of Dr Evans' statement and goes on with his opinion. This is just a tiny snapshot of what we have for hundreds of pages of evidence. It does not require me to go through all of them in this report, but it carries on in this vein through all of the reports; a close analysis of the evidence that the jury are going to see, followed by expert response to the prosecution experts, combined with or followed by his own opinions as to cause or other relevant matters, all of which we respectfully submit should appropriately and properly be dealt with as part of that body of evidence dealing, for example, with this particular child and, as close as possible, to these experts. It is inter-related.

Our submissions, by contrast, if we were to anatomise it so that defence evidence came at the end of the case, and we just set this out at paragraph 9 on page 36, we do have a position where we are going to have our defence experts. We acknowledge Dr Hall is by far the more substantial of the two in terms of content, between him and Mr Rahman. But they will come months after substantial complex facts and exhibits. It makes it much more

difficult for the jury and potentially the court, even, to marshal what is said and places them at a disadvantage.

Therefore, in answer to the question, "Why is it the expert medical evidence should be heard as part of a body with the evidence?" it is there, because it really is intrinsically connected with it and will have to make reference to it as we go along.

The next question, rhetorically, of course, will be posed more for the purposes of advocacy than any question to the court is above paragraph 10, "Why is it that expert medical evidence vis-à-vis the experts be taken as a whole?" This follows on really from the submissions we have been making here and is borne out by this tiny glimpse into one report.

The jury requiring evidence on each count to the best of the ability of the court to allow that, it will assist them to receive all medical evidence as an ongoing process. They can then assess what one expert is saying alongside the relevant evidence and, indeed, the experts themselves have that benefit and with reference to one another.

There is a marked measure of disagreement amongst the experts on many issues, on many of these counts. Not on all of them, but on many of them. That is going to have to be dealt with in evidence. We submit, first of all, it would be imbalanced for the prosecution experts to give their evidence repeatedly over a period of months over and over again, without hearing what the defence experts contribute to that. Moreover, it will become a very difficult process for the jury to listen to what defence experts are going to say when put to prosecution experts in cross-examination, to then not hear exactly what those defence experts say but to receive that maybe months later and then for any relevant cross-examination of those defence experts by the prosecution to follow month later from the issues that were introduced initially at an earlier stage of the court. It splits it into two halves.

The position that we have reached in this case, in accordance with necessary procedure for an expert case like this and the directions of the court, is we have the joint expert report now. Your Lordship will find that starting at page 41 of this bundle. This does not, of course, get close to providing the detail of what lies behind the opinions that are given but it has been a helpful process in, in effect, distilling to as short a form as possible what the areas of agreement (not many) and what the issues are between the experts in the case. Your Lordship will see at paragraph 1 the experts who participated in this joint meeting.

So, this evidence now, wherever it comes from, has an intrinsically joint aspect to it and the experts are now -- and have been in the statements that have followed this -- basing what they say not just upon their starting point in their assessment of the evidence, but in response to what other experts have said. Again, dealing with [Baby A], just by way of example and because it links to the report we have just looked at, my Lord, at page 42, your Lordship will see that, after a very brief summary of what the case concerns, there is almost, in effect, a list of who says what on it, each issue going from (i) down to (xviii) with initials at the end of it.

Often, Drs Bohin and Evans ad idem, generally, on what they have to say, not always but often. Sometimes Dr Hall and Dr Rahman, ad idem. In fact, in their case for the defence, sometimes not; we recognise that. There are a multiplicity of competing opinions sometimes, but intrinsically linked now across the different experts. Inevitably, the experts will be required to deal with the opinions of experts who differ with them. That has to be dealt with in a way that is as logical and with as great ease as possible before the jury as can be achieved. We submit that requires them to be heard together.

Following the joint expert report, there have been further statements, in particular, from Drs Evans and Bohin, dealing with issues that came out of that joint meeting. The next two statements in this short bundle -- and these are all examples; they do not get close to the entirety of what we are dealing with -- the next two bookmarked statements are statements that come out of the joint meeting with the experts and their opinions of one another's work. The first of those is a report, a further report by Dr Evans on [Baby A]. My Lord, that commences at page 57.

MR JUSTICE GOSS: Yes.

MR MYERS: If your Lordship moves down to the bottom of that first page, page 57, paragraph 2, your Lordship will see Dr Evans says, "I have prepared this witness statement at the request of Cheshire Police". He goes on to say he has been asked to address observations of Dr Hall in Dr Hall's report, dated 14 January, as to his search methods. This is a reference to his research into clinical literature relating to air embolism in neonates, which is a hotly contested area in this case. What the basis for these opinions is, how it can properly be diagnosed, what alternative diagnoses there may be. He then goes on in the report to deal with that.

It does not stop with a response to research questions. If your Lordship moves down the report to page 62 in the pdf, paragraph 22, Dr Evans then goes on to consider not just what Dr Hall says

about the publications review, but more generally Dr Hall's report, in relation to his comments and findings. This is on the question of air embolus, which is a fundamental aspect of a number of the charges that we will be dealing with. I do not propose, unless your Lordship wishes me to, to go through this. But we then have a lot of detail in the paragraphs that follow, dealing with points that Dr Hall raises and which are going to repeat themselves across the children on this indictment.

One benefit of the experts giving evidence as close to one another as possible is not simply the question of keeping it simple and organising evidence, so all relevant evidence falls as closely together as possible. It also means that, insofar as opinion is given on relevant issues, if there is to be any development or response between the experts, as they listen to the case and hear one another give evidence, that can happen in real time as we go through the relevant evidence, because they will be returning to give evidence. If a point is raised during the course of evidence, it can be dealt with as or when those experts next come to give evidence. It will be dealt with, again, alongside or close to the material to which it relates.

Were we to approach this in the way that is proposed, with all the defence experts giving evidence at the end, putting to one side the manifold points we make on that already, one can see the difficulties then, if things are said in terms of expert opinion, which require a response from the prosecution experts, and where we get to in questions of who we recall and how far we go with that at an even later stage of the case, after the defence experts have given evidence. The risk of that does not emerge if the experts have been giving evidence in what we would call the conventional place one would expect them to, as the case goes along and as any issues develop.

The point illustrated by that one statement, and there are many other statements in which the experts comment upon one another, but in that one statement is the way in which this is now an inter-related exercise between these experts. The same goes for Dr Bohin, my Lord. There is a statement, I think one of the most recent ones, from her at page 69 regarding [Baby H]. The issue concerning that report is at page 70 of the bundle and it is 1.2(ii), where Dr Bohin, referring to herself, in fact, in the third person says:

"According to the joint report of Drs Bohin, Evans, Hall and Rahman in the meeting, Drs Bohin, Hall and Rahman observed the tip of the non-pigtail chest drains appeared to be in various positions on a series of X-rays."

In this particular instance, the evidence is focusing upon where a series of chest drains were placed and whether, on one

occasion, there was movement of one of those drains that might have created clinical complications. Reduced down to its basis, that is what this deals with. She gives opinion as to whether or not movement of the chest drain would have created clinical complication. That opinion coming directly out of, in particular, what Dr Hall has had to say about it and by reference to that and a significant issues in the case of [Baby H], just an example. But one that becomes very difficult to deal with if her evidence on that is taken or presented in a way that is in isolation to what she is dealing with. To come back maybe months later to revisit all of this and maybe have to go back through the evidence on which it is based will be difficult or more difficult than it otherwise would be. This is just one narrow issue with one of the children on this indictment.

For those reasons, we say there is a great need for the experts to give evidence as close together as they can.

Can I just deal with a question about the position of the defendant, my Lord. I am looking at paragraph 13 of our submission. In the submissions that we make to your Lordship, we take into account matters that have been raised by the prosecution in their submission. I am trying to deal with all matters as much as I can, as I go along, pre-empting matters that my learned friend will raise. I am grateful for their submission.

So far as the defendant is concerned, we made the submission at paragraph 13 and those that follow, that it is preferable for her to give evidence when all the salient medical evidence has been heard. Response by the prosecution includes the submission, and it is at paragraph 6.3 of their larger argument, the principal argument, page 45 of the bundle, that of course the defendant, if she chooses to give evidence, will have to deal with everything in one go. That being the case, and I do not do justice, of course, to the way in which this is phrased; I will just summarise it. That being so, that is something which the defence expert should also be able to deal with. I summarise it, although I am sure my learned friend can enlarge as required, and I mean no disrespect by saying that.

But our submission there is that the position of the defendant is entirely different and there are different considerations in her case from that relating to expert witnesses. Just pausing there, an expert witness -- of course, you have to keep in mind, as the court will, the nature and purpose of their evidence. It is different opinion evidence, as the court will understand, from non-experts or a defendant. It is independent, it is provided to give assistance to decision-makers and what conclusions they draw. Therefore, it can be presented in a way that can be moulded to achieve that best outcome for the jury.

We submit it can only help to receive that sort of evidence as one body and whatever the greatest benefit is, without any view to any tactical advantage.

It is entirely different from defence evidence which is not of that nature and is not of that purpose. So, to say that the defendant gives evidence at the end in one go, so should the prosecution, and so should the defence experts, we submit, is to fail to take account of the purpose of expert evidence and its character. Moreover, the reason, we respectfully submit, a defendant, if she or he chooses to do so, gives evidence at the conclusion is so that they are able to give their evidence, in the first instance, having heard the particulars of the case against them.

Putting aside questions of defence evidence, so far as the prosecution evidence is concerned, that is a right that a defendant has. That is why it comes at the end in that way. There is a purpose to that which does not apply to prosecution witnesses. We say to treat what should happen with the defence experts as analogous with what should happen with the defendant does not take us to a proper analysis of the position.

I just have two final points to make with regard to the prosecution submission, if I can deal with them in one way, in fact. There is some criticism by the prosecution of either the nature or the quality of some aspects of the defence evidence. I look, for example, at page 46 of the agenda bundle, the prosecution submission, (v). I would like to unpick this if I could to assist the court. But at (v) on page 46 of the agenda bundle, the prosecution say the defendant's evidence is critical, the defendant should give evidence before any expert on whom she relies, because it will enable her jury to assess what she says without the path having been cleared or obscured for her by an expert. Putting it another way, it will make it more likely that she gives her account uninfluenced by what one or other of the experts has interpreted or being cross-examined about.

Let me just pause there to say in the nature of expert evidence, there are good reasons for it to be as one, but I move one. "Examples of obfuscation by the experts in their reports" and two examples are given. One, it says:

"Whereas the defendant agrees [Baby K] was paralysed and immobile at the relevant time, Dr Hall suggests the anaesthetic had yet to take effect."

The second point, "Whereas the defendant agrees that blood was present in [Baby M]'s oral cavity before the first attempted intubation, Dr Hall suggests that it was afterwards". I am going

to, if I may, explain what that amounts to and then unpick it because, we submit, that is not a proper criticism of the experts at all. Moreover, we submit, if there are questions of weight or credibility, they are matters for cross-examination, not matters that mean one branch of the evidence should be relegated to the conclusion of the trial when there are very good reasons for it to be heard alongside the evidence to which it relates, including competing prosecution evidence.

Lest that assertion go unanswered, can I deal with both parts. It will also provide your Lordship with an illustration of the sort of inter-related detail we are dealing with these experts. With regard to the suggestion that Dr Hall has obfuscated the evidence concerning [Baby K] there is an issue in the case concerning [Baby K] where a deterioration that follows the dislodgement of an ET tube, endotracheal tube, whether that is a tube that was dislodged by the defendant or whether it could have dislodged inadvertently by the movement of the baby. A pivotal part of the prosecution case is that the child was sedated at the time this happened, which makes it far less likely, if not impossible, that it could have moved by her agency. It is that to which the prosecution are referring when they say that Dr Hall is suggesting the anaesthetic had yet to take effect, as if in somewhere. But the defendant has supposedly conceded that and, in some way, he is obscuring it for her benefit.

My Lord, that is not the way this goes. [Baby K]'s report from Dr Hall is the fifth item in this bundle and it starts at page 75. I am going to go directly to the piece of evidence we are talking about, illustrative of the points we are making but also to deal with this criticism. Just bear with me, please.

MR JUSTICE GOSS: I am not there yet.

MR MYERS: It paragraph 7.2 at page 88 of the pdf.

MR JUSTICE GOSS: Page 88.

MR MYERS: This also, in addition to answering his criticism, illustrates why this evidence needs to be heard alongside the prosecution evidence.

MR JUSTICE GOSS: Very well.

MR MYERS: Your Lordship will see, following -- sometimes the section of the report changes, but the structure does not. Dealing with his comments on the statement and opinions of expert witnesses, which, of course, largely incorporate the defence response. 7.1, "The picture painted of an optimally resuscitated and well-sedated is not, in my opinion, supported

by the documented information". He then gives the reason below. In fact, he takes the experts who have commented on this and goes through his response to each of them.

He deals with Dr Evans first at 7.2. We, of course, will deal with this in evidence but your Lordship will see references to the exhibits in bold type on the right-hand side of that page, as your Lordship goes down, cross-referring what he has to say to the relevant exhibits, which he would maintain show that morphine was not administered until a time after the tube was dislodged. That is what he deals with there. There are other issues [Baby K] he deals with, but that is what he has to say about it. By an analysis of the relevant medical documents, he explains that they do not support the contention that she was sedated at the time. What he does not do anywhere is to make reference to anything the defendant has said or seek to obscure anything. What he said follows from those documents. It is not right to say that he has sought to do that.

As to what the defendant has said, when we get to that territory, we are entering the territory of the responses she has made to questions in interview, which will lead to quite a different part of the case and how she comes to say some of the things she says, the defence will submit. That is quite a different issue but it is not correct to put that alongside what Dr Hall says from a straight analysis of what is on the documents. That is not a well-placed criticism, we say respectfully, but moreover this illustrates precisely how closely these pieces of evidence are related on another small issue, but that repeats throughout.

The second matter in that paragraph, critical of Dr Hall, is the suggestion that there was blood present in [Baby M]'s oral cavity before the first attempt at intubation; that, with a view to obfuscation. Dr Hall suggests it was afterwards. The issue there, my Lord, is as follows. [Baby M], one of the counts on the indictment relating to him, is identified to have blood in the area of his oropharyngeal cavity. There is an issue as to whether that was there before intubation began or afterwards. Put simply, the contention being if it came afterwards, it could have been caused by efforts at intubation. It was there beforehand, we anticipate the prosecution will say that may be or is due to the defendant. When blood is seen, matters on that point.

Can I take my Lord to what Dr Hall's evidence actually is. The report on [Baby M] commences at page 100 and the paragraph I am going to take my Lord to is 9.1.2.1 and I will just find that now. That is 9.1.2, my Lord, at page 129.

(Pause)

MR JUSTICE GOSS: I am on that page.

MR MYERS: Thank you. Page 129, paragraph 9.1.2, at this section Dr Hall is dealing with his response to the prosecution experts. Both Drs Evans and Dr Bohin have made reference to what they say is material indicating blood was present before the attempted intubation. Your Lordship will see that quote in italics from Dr Evans at (i) under 9.1.2 and other things that he says about it. Scrolling down the page to the section opposite line 805, it says, "My Comments" by Dr Hall. In the paragraphs that follow, he deals with the question of, first of all, whether or not the material available indicates when blood was identified as present.

Again, by reference to the relevant evidence, his assessment is that the notes do not convey the picture that the prosecution experts do. It is simple as that on that point. Of course, that would involve, in evidence, going to the notes that the jury will have looked at with the prosecution experts, fresh in their mind. They will have heard also this is not just about the experts. There will be numerous clinicians, whether they are nurses or doctors, who will be giving evidence on these issues and, indeed, the witness, [Witness 2], involved in this particular procedure, we anticipate, is due to give evidence and he will give evidence talking about what took place. So, it all forms part of a whole in the evidence.

In that context, Dr Hall has set out, from the documentation, his reasons for disagreeing that it establishes blood was present and that plays a part; blood was present before intubation. That plays a part in resolving this issue that goes to one of the charges that the defendant faces. Nowhere in his report here is he making any reference to what the defendant has said in her interview or seeking to obscure anything. This is just from the paperwork and that can be considered with him and the practitioners who created it or who were involved in it at the time. Ms Letby was doing the procedure with [Witness 2]. Other people are present at the unit.

So, we submit, it is not right to take this as criticism. Where there are criticisms to be made of witnesses from either side, the court will be familiar they can be dealt with in cross-examination. But we were anxious to deal, in a little detail, with that because that rather went to the bona fides of Dr Hall in this application and we submit it does not do that, but it does illustrate, as it happens, why these pieces of evidence and these witnesses are closely interconnected.

My Lord, those are the submissions as to why it is we say, so far as practicable the experts should be heard as close together

as can be achieved. It will not always be perfect. Some, like Dr Hall, Dr Evans and Dr Bohin, we anticipate, will be present here throughout the trial or most of it. Dr Hall will be here, whatever the situation. So, he will be available. Others may be more constrained of their clinical duties from both parties. When that happens, subject to the conclusion your Lordship reaches, we will have to endeavour to get them as close to the material they deal with as possible. But that is the position we are in the experts. Those are the submissions we make. If I can deal with anything at this stage, I will. Otherwise, I can assist your Lordship in due course.

MR JUSTICE GOSS: Exactly. I will wait until I have heard from Mr Johnson. Yes, Mr Johnson.

#### SUBMISSIONS ON BEHALF OF THE PROSECUTION

MR JOHNSON: My Lord, the application suggests that clarity will emerge from the proposal. We respectfully submit that precisely the opposite will be the case and I will give you reasons why.

Can I start with the norm. The norm is, as we have set out in our written response, set out in the Criminal Procedure Rules, rule 25.9 and it is that the defendant gives evidence first as part of her case and then calls any evidence in support of her case. That is all set out in the agenda bundle at page 43. We have reproduced the full text or pretty much the full text of rule 25.9 and highlighted the relevant parts, concentrating at the end of that paragraph on H. That is the norm.

We submit that if there is to be a departure -- well, I make the obvious point first, perhaps. The norm is based on many, many years of experience of criminal litigation in an adversarial system. This is not an inquiry; it is a criminal trial. We submit that to depart from the norm requires strong justification. If the justification is said to be clarity, then while that is an attractive end, the reality of the facts of this case will be exactly the opposite.

My learned friend suggested that evidence given back to back by experts is the norm. It is not. Even if it was, which it is not, in most cases there is a single or, at most, two or three incidents in respect of which expert evidence is called in the trial. This is a case, as has already been remarked on, with 22 incidents which are said to be crimes. As your Lordship knows, the allegations of attempted murder have been split down into incidents in effect, but of course the murders have not. Taking [Baby I] as the most extreme of the murder cases, we have four separate incidents in which the Crown say she was assaulted with the intention of killing her. It was only the fourth time that that attempt succeeded. If we are actually breaking this down

into incidents, we are going significantly above 22. That is the first point.

My Lord, I am not going to repeat everything that has been put into writing because we know your Lordship has read it.

MR JUSTICE GOSS: I have it in front of me as well.

MR JOHNSON: Yes, exactly. So, I am not going to do that. Yesterday, we received from Dr Marnerides, the Home Office pathologist, his availability. We met Dr Marnerides in the summer and we discussed his professional obligations. Your Lordship knows a little bit about this because the expert, the joint expert report was delayed because of Dr Marnerides' obligations. He is exceptionally busy, eye-wateringly busy.

MR JUSTICE GOSS: Sadly as are all forensic pathologists.

MR JOHNSON: Yes. Even by the standards of --

MR JUSTICE GOSS: Even by the standards of forensic pathologists.

MR JOHNSON: -- forensic pathologists, he is busy. The decision we have had to take to make this case manageable and runnable from a day-to-day point of view is that we will call him at the conclusion of the prosecution evidence. It is the only way it can work.

He has given a report in seven cases, the seven murder cases for obvious reasons. In one of the seven he has been unable to offer an opinion, in effect, and he explains the reasons why. In the other six, with varying degrees of certainty, he supports the allegation that the children were unlawfully killed. The defence have not served any evidence from a pathologist and we draw the obvious inference.

Dr Hall and Dr Rahman, from time to time, defer to experts in other disciplines on critical questions. Taking as an example, Professor Hindmarsh, the endocrinologist, who deals with the issue of insulin, they are by and large -- they being Drs Hall and Rahman -- are remarkably silent when it comes to Dr Marnerides' opinions.

If the case proceeds, as my learned friend suggests it should, by the time Dr Marnerides gives his evidence Drs Hall and Rahman will have finished and will not be able to be questioned about his opinions. That is not consistent with the end contained in the overriding objective because their evidence will not have been tested against what appears to be the undisputed evidence of Dr Marnerides.

For that reason alone, we respectfully submit that this application is misconceived.

MR JUSTICE GOSS: Perhaps "misconceived" is not the appropriate word.

MR JOHNSON: Well no, sorry. It results in an end that is not consistent with the overriding objective.

MR JUSTICE GOSS: And should not be acceded to for that reason alone, you would say.

MR JOHNSON: Correct, yes, sorry.

MR JUSTICE GOSS: It is not to say it is misconceived.

MR JOHNSON: I would like to deal with, if I can get my laptop to work, sorry -- there are a couple of points. In my learned friend -- sorry, Dr Rahman was the other point. This was hinted at by my learned friend in the application. The clarity that it is said will be brought to the proceedings by having the expert evidence called back to back might emerge from having all the expert evidence on the same point at the same time. That is the paradigm. But the reality, unfortunately, because of the obligations of the experts is simply not going to meet that objective. I do not know, we do not know precisely what the professional obligations are of the defence experts.

From the prosecution's point of view, we can pretty much guarantee being able to call Drs Bohin and Evans when we want to call them. If Dr Hall is here, then the defence will be in the same position, but the position, as we understand it at least, and it may be that your Lordship would like some clarification on this from the defence, is that Dr Rahman is in busy practice. The possibility of him being able to be at this court to give evidence when it is convenient -- convenience being looked at from the point of view of the jury, having all the evidence about the same points at the same time. The possibility of that happening seems to us to be remote.

What are the consequences of that? Potentially that he is called partway on the one day of the week that he can be here, partway through the prosecution evidence on a different child?

MR JUSTICE GOSS: Yes. It may be that he would have to give evidence in relation to more than one child on the same occasion.

MR JOHNSON: Yes.

MR JUSTICE GOSS: I think that is... yes. I think what I think Mr Myers has essentially agreed is that may have to be -- and he did in fairness. He did say, "Insofar as it would be possible".

MR JOHNSON: No, exactly. I am not suggesting that he has, in any way, hidden this.

MR JUSTICE GOSS: No, he has not. He has not, no. You are talking about the practical consequences and just examples of what is going to happen. It is not going to be the ideal. It is not Mr Myers, because he puts it forward as the ideal, but at each stage after the factual evidence in relation to a child that has been given, the experts will give their evidence, the prosecution, defence and so on. That is not going to be possible, you say.

MR JOHNSON: But it is not achievable. So, I come back, my Lord, as I often do to where I started. The reason things are as they are and have been for at least a few hundred years...

MR JUSTICE GOSS: There is a reason for the order and the order, still largely being the same, with the discretion in appropriate cases to adjust it.

MR JOHNSON: Yes. That is why we submit that there has to be a strong justification it is achievable, practically, in order for the normal course of events to be departed from.

MR JUSTICE GOSS: We have to be careful about talking about hundreds of years because it was only 123 years ago that a defendant could give evidence in their own case.

MR JOHNSON: Yes, yes. I do not know how long expert evidence has been admissible but anyway there we are.

MR JUSTICE GOSS: There were not so many experts.

MR JOHNSON: No. Probably fingerprints was the first area but anyway, be that as it may.

MR JUSTICE GOSS: That is about 100 years ago, is it not. Anyway, that is an unnecessary digression. I have your point. I understand what the point is and Mr Myers can respond to it.

MR JOHNSON: Can I deal with -- because I am deliberately not going to repeat what I have set out in writing because it is unhelpful. Towards the end of his submissions, my learned friend dealt with the issues that I raised in relation to Dr Hall's evidence about [Baby K] and [Baby M]. I think he referred to page 129 of his bundle, which is the report on [Baby M] and it is page 30 of that report. I am just trying to find the

reference. It was 9... sorry, thank you. It is the bottom of page 129, I think, which is his comments.

MR JUSTICE GOSS: It is at the bottom. My inference from these statements is that they do not provide definitive evidence of blood being present prior to the insertion.

MR JOHNSON: Yes. That is not even expert evidence.

MR JUSTICE GOSS: It is his inference. That is what you were going to pick up on.

MR JOHNSON: I am sure you have seen it all.

MR JUSTICE GOSS: I have not seen it all but I had seen that because my attention was drawn to it.

MR JOHNSON: Yes, absolutely. This is an expert descending into the factual dispute, not giving an opinion on the facts as they are established. That leads into the obvious point, which is the one that we have made in writing. By the time that a defence expert would give evidence in the normal way, the facts have been clarified.

MR JUSTICE GOSS: The case is known.

MR JOHNSON: Yes, the case is known and the particular points of dispute have been clarified. One knows categorically, if the defendant chooses to give evidence, what she is saying about certain facts. There are myriad examples in this case, not least Dr Hall picking out people's descriptions about the fleeting rash and saying, "That description is different to that and so it is not the same thing". Yet, the defendant herself says, "What I saw in case 1 was the same as what I saw in case 2". These are all things that could be and should be, we submit, ironed out before the defence experts give evidence. My Lord, for those reasons and for the reasons that we have set out in writing, we submit that this is not a case in which the norm should be departed from.

MR JUSTICE GOSS: Thank you.

MR JOHNSON: I do not know whether there are any other specific areas you would like us to deal with.

MR JUSTICE GOSS: No, thank you. Mr Myers.

REPLY ON BEHALF OF THE DEFENCE

MR MYERS: There are two areas to respond to, my Lord; one concerning Dr Marnerides and the second, Dr Rahman and the

question of how realistically experts can be brought as and when required.

Dealing with Dr Marnerides first, the position concerning Dr Marnerides has been explained today. This is the first occasion we will deal with it.

MR JUSTICE GOSS: You did not have any inkling of the fact that --

MR MYERS: Today I did, yes.

MR JUSTICE GOSS: Only today?

MR MYERS: Yes, but that is not that -- just so we can understand how we come to this. It is a decision that is reached, as I understand it, because arranging court attendance for him is so difficult it is the only sensible way of doing it and we do not question that. Indeed, there is no criticism made about it but it is important the court understands the submissions we make and propose were made long in advance of this matter having been identified.

But we can also see, as it happens, where a pathologist is concerned that sometimes, as it happens, a pathologist will be in a position to comment upon evidence. That is incidental to the arguments we propose but it is not unusual that a pathologist will present conclusions at the conclusion of the evidence. We submit if this pathologist is going to do that, it should be at the conclusion of all the relevant evidence.

The purpose of placing him where the prosecution now place him is one of necessity, not choice. He is there because he has to be there. The choice would not have been that, it would seem.

As to Dr Marnerides, we make these points when considering this: whether his position should influence the courts will be decisive in the court's deliberations. As we observed earlier, he does not deal with every count on this indictment. There will be seven, we anticipate, that he is concerned with. The evidence that he gives, while serious and significant, is far less protracted and detailed than that of the paediatricians and the neonatologists. It is entirely different in length and depth. That is not critical; it is because he does not deal with the clinical issues and what the witnesses describe. So, as it happens there is less difficulty created by him coming at the end of the prosecution evidence in that way.

The third matter is this: we submit his work commitments and the way they influence where he gives his evidence should not determine what is the optimal place for other witnesses. When

one considers the Criminal Procedure Rules and what is said about the way the evidence is presented, Drs Hall and Rahman are not pathologists. They cannot give evidence on pathology, in any event. Therefore, there is nothing gained in terms of balance or what we respectfully submit would be the fairness of the case to them in the round, by them giving evidence after, as if in some way that balances any inadequacy to the defence, because they are limited in what they could say anyway. The point is made. They are not pathologists. The defence do not call a pathologist. That is one of the parameters of this case.

There is no imperative, we submit, in terms of balance or fairness that they should be moved to a point right at the end of the trial distant from the other evidence as if somehow that enables them then to deal with whatever the pathologist says. It will not help for the reasons we have said and, in any event, it is not their area of expertise. That is Dr Marnerides. We submit that does not resolve the question of where the experts should give evidence. We recognise that is a matter for your Lordship but that is our submission on that.

MR JUSTICE GOSS: Thank you, that is helpful.

MR MYERS: As to the more general point with other doctors in this case, when they can attend, and Dr Rahman is given as an example, the same issue attaches to Dr Arthurs, who is a paediatric radiologist for the prosecution based at Great Ormond Street. His convenience will have to be accommodated as would, if she gives evidence for the defence, Dr Katharine Halliday. That is a fact of this case outside Drs Bohin, Evans and Hall. The other doctors will have to be fitted in in the best way possible, as your Lordship observed, maybe sometimes dealing with more than one child at a time. That is what we meant by practicable and your Lordship understands that.

If it is to be said that Dr Rahman -- and, for that matter, this applies to the prosecution witness, Dr Arthurs -- but if it is said to be a problem for Dr Rahman to come maybe out of sync on several occasions and have to deal with a couple of children, if that is meant to be a problem, we would submit that is nothing compared to the issue of the difficulty caused by him coming months after all the evidence that he would otherwise be dealing with, and dealing with them all in one go. That is a far more significant problem.

The question was raised, "How will we arrange the attendance?" There are no dates yet for the attendance of any witness. We understand that because it is fluid. For example, in the case of Dr Rahman, the information provided is he is available on Monday mornings, Thursday afternoons and Fridays. It is difficult to think we cannot work with that in some way. Even if it is not

always perfectly synchronised, there is sufficient flexibility to ensure that, where he is giving evidence to be called on a particular child, and that will happen in most of these counts, he can do so at a time near to the evidence that relates to it.

Those are the responses we make unless we can be of any further assistance.

MR JUSTICE GOSS: No. That deals with the matters that I was concerned to hear your responses. Thank you very much, indeed, Mr Myers. I am not going to give my decision now. I want to reflect on this and read through the material to which reference has been made. I will give it on Monday. I will probably put it in writing but, as you will appreciate, this is essentially a case management issue. I am not going to give a detailed reasoning. I will highlight the main reasons why I reach the conclusion, whatever that conclusion is, but I am not going to give a detailed "modern" judgment, which unfortunately they go on for a long time.

MR MYERS: We understand. My Lord, before we rise, may I just raise one final matter unrelated to this.

MR JUSTICE GOSS: Of course, please anything. I was going to say.

MR MYERS: It is just to update the court about the issue, the prosecution of Ms Letby. We are very grateful for the efforts made under the direction of the court and together with the prosecution in obtaining the psychiatric report. That has dealt with that issue.

MR JUSTICE GOSS: Yes.

MR MYERS: We are very grateful to the court and any others who have been involved, for instance the Liaison Officer, for communication with the prison. We will, of course, watch closely how Ms Letby deals with the transport arrangements, as I am sure will the court and those caring for her. With our best efforts and hers, we still anticipate there may be some issues that develop as we go along and I would be grateful if we can raise them with your Lordship when they do, recognising your Lordship does not carry the responsibility for how the prison estate manages itself.

MR JUSTICE GOSS: No, but I do have responsibility for the fairness of the trial. That is obviously one of my primary concerns; that I am not going to have a defendant who is, by reason of circumstances beyond her control, perhaps not in an appropriate state.

MR MYERS: We are grateful, my Lord.

MR JUSTICE GOSS: That brings us to the final point. I am sorry to interrupt.

MR MYERS: No, not at all.

MR JUSTICE GOSS: In relation to the basic timetable -- because I have read the psychologist's report obviously and the recommendations that are made there. What I would like to strive to do in the first instance is that we generally sit no earlier than 10.30 am because I think it would be impractical to try to sit earlier than 10.30 am. There was a very distinguished judge from the circuit who always said never before 10.30 am because very often you never achieve anything more by doing that. Then we will just take it in stages. Maybe we will finish earlier in the afternoon to accommodate if you need to discuss matters with Ms Letby or if she is tiring, by reason of concentrating for long periods.

If we need to have mid-morning breaks we will. If we are having, essentially, around two and a half-hour sessions, if possible I would like to maintain two and a half-hour sessions. Once you start having mid-morning breaks, 10, 15 minutes is pointless, you end up with 20 minutes and it turns out being half an hour and you just lose, in the course of a week, about half a day to a day's sitting time. I would rather -- I am articulating this so that everyone can hear and understand why I am going to do what I am going to do. I would like to say 10.30 am to 1.00 pm; a basic timetable with some flexibility. Then from shortly after 2.00 pm, probably slightly longer than one hour because I appreciate there are other matters that have to be attended. If you, for example, needed a longer lunch break to take instructions, I will, within reason, accommodate you. I know there will always be reasonable requests. Then we will see where we get to and maybe finish slightly earlier and certainly not less than absolutely necessary and we are able to go on to 4.30 pm.

MR MYERS: We are grateful for that, my Lord.

MR JUSTICE GOSS: I hope that is some measure of reassurance.

MR MYERS: Yes, thank you.

MR JUSTICE GOSS: Mr Johnson, unless there is anything you want to say, in particular.

MR JOHNSON: No. Can I repeat the plea I have made to your learned associate and his predecessor to get the temperature turned down in here.

MR JUSTICE GOSS: There are not many people in here and it is still hot.

MR JOHNSON: Exactly.

MR JUSTICE GOSS: Half a kilowatt of body heat per person.

MR JOHNSON: Yes and the government says that we should all be saving energy. It makes people grumpy in the afternoon as well.

MR JUSTICE GOSS: Because it is soporific. Its effect is soporific. We will do what we can. Coming back to the point, I have asked the Clerk of the Court to pass on my thanks to those who have assisted the court and the defendant. I am very pleased to see the escorts here today and yesterday, compared to the escorts who were -- I am not being critical but you know what I am saying.

MR JOHNSON: Yes.

MR JUSTICE GOSS: I am grateful, when the officers go back to New Hall, if they could pass on my thanks to the unit there who are assisting in relation to this.

MR JOHNSON: My Lord, yes. We are grateful too. Thank you.

MR JUSTICE GOSS: 10.30 am Monday morning. Thank you very much. Thank you.

(The court adjourned until 10.30 am on Monday, 10th October 2022)