

1 July 2024

Directions of Law, Judge's Summing-Up, Prosecution & Defence
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SUMMING-UP (continued)

Monday, 1 July 2024

(10.30 am)

(In the absence of the jury)

Housekeeping

MR JUSTICE GOSS: Mr Johnson, Mr Myers, the final version of the directions of law has been sent to you this morning.

You're both content?

MR JOHNSON: Yes.

MR MYERS: Yes.

MR JUSTICE GOSS: Thank you very much for the corrections that were proposed in relation to it.

MR DRIVER: My Lord, may I enquire, have you received the revised index as requested?

MR JUSTICE GOSS: Oh right. Thank you, Mr Driver. Do you want to deal with that when the jury come in then?

MR DRIVER: Certainly.

MR JUSTICE GOSS: Thank you very much.

(In the presence of the jury)

MR JUSTICE GOSS: Good morning, members of the jury. Before I give you the first set of directions of law, Mr Driver is going to provide you with a fuller index to your jury bundle. Do you remember, I said that it would be helpful to have a fuller index? You're going to get that now.

MR DRIVER: The court usher is going to distribute them to the jury now. May I suggest we take out the existing index that

should be at the front of the white bundle, discard that, and replace it with this more detailed, revised, version, which runs to three pages.

(Handed)

SUMMING-UP

MR JUSTICE GOSS: Thank you very much.

Usher, would you now please distribute the directions of law?

Do you remember I said at the very beginning of this trial you're going to get the directions of law in writing? You'll get a copy each now. It's a matter for you where you place this. I will read through them with you, but you may want to put them in due course behind the indictment and section 1, which is the logical place. You can put them there in due course, but you might want to keep them free until then because you have enough difficulty given all the documents and files that you have already.

This is the first part of my summing-up. It won't take very long and you'll see it's a relatively short document. You will then hear the speeches of counsel and then I will complete my summing-up after that. So I will now speak to these directions.

Lucy Letby, to whom I shall refer as the defendant, is accused of attempting to murder [Baby K] on the day on which she was born, 17 February 2016, after she had been transferred from the delivery room to the neonatal unit of the Countess of Chester Hospital.

The prosecution allege that the defendant deliberately interfered with [Baby K]'s endotracheal tube, ETT or ET tube as it was commonly referred to, through which she was being ventilated with air and oxygen, causing her oxygen saturations to drop, intending to kill her.

They allege that the defendant was seen by Dr Jayaram, the consultant paediatrician on duty, who intervened and [Baby K] was resuscitated. The defendant has no recollection of any such event and denies having done anything harmful to [Baby K].

So that's a summary of the issue or issues in this case.

Our respective roles. The law is my responsibility and these are my directions of law which you must accept and apply in reaching your verdict. You, on the other hand, are the judges of the facts and the conclusions to be drawn from the facts. You decide the case on and only on all the evidence placed before you.

There will be no more and you must not speculate about what other evidence there might have been.

As I said at the very beginning of the trial, you must not approach the case with any preconceived views and you must cast out of your decision-making process any response or approach to the case based on emotion or any feelings of sympathy or antipathy you may have.

It is instinctive for anyone to react with horror to any allegation of deliberately harming a child, the more so a vulnerable, very premature baby. You will naturally feel sympathy for [Parents of Baby K]. You must, however, judge the case on all the evidence in the case in a fair, calm, objective and analytical way, applying your knowledge of human behaviour, how people act and react, and using your common sense and collective good judgement in your assessment of the evidence and the conclusions to be drawn from it.

Evidence. The evidence has taken a number of forms.

There is direct evidence from witnesses called before you or read to you. Some of them were screened from others in court. This is permitted by law and now commonplace, the purpose being to assist the witness to give their best evidence. It has no relevance to the quality of their evidence as a witness and you should attach no significance whatsoever to a witness being screened. You judge the witness in exactly the same way as you judge any other witness. You certainly do not hold it against the defendant or her case that a witness has given her evidence in this way.

There is also a significant amount of documentary evidence and digital material as well as agreed facts which you have in writing. Facts in the statements of witnesses whose evidence was read to you are not in dispute; you take them as accurate and reliable. Where a witness's evidence is disputed or there is a conflict in the evidence and you consider it necessary to resolve that conflict, you decide who you find truthful and reliable in relation to the matter in issue and who you do not.

In the case of any witness you may accept all of what they say as truthful and reliable, you may accept some of what a witness says as truthful and reliable, but not all, or you may reject all of what a witness says. It is entirely a matter for you.

What counsel say to you is not evidence. They are advocates, not witnesses. Their role is to present their respective cases, to question witnesses and to advance arguments on the evidence for to you consider.

A suggestion or proposition in a question by counsel is not of itself evidence. It only becomes evidence if the witness agrees with it. As the judges of the facts you alone decide the significance of any evidence that is agreed or you find to be truthful and reliable and the importance to be attached to it when deciding your verdict and the conclusions you draw from all the evidence.

What a witness other than the defendant says in the witness box at any time and in any witness statement he or she made about events is all evidence in the case for your consideration. Where there are or appear to be differences in accounts it is for you to decide how different they are and whether or not the differences or any of them are important. If you decide that any differences are not important then you should ignore them. If you think that any differences are important you should consider the reason given for the difference or inconsistency. If you are sure that the explanation is valid, you may accept what the witness said in their evidence to you from the witness box. If you reject the explanation or you are not sure telling the truth you should treat both what the witness said in their statement and what they said in the witness box with caution. If having done so you are sure that what the witness said in their evidence to you is accurate and reliable, then you may rely on it and take it into account. If you are not sure whether any version is accurate then you should not take any into account.

You do not have a copy of a witness' statement when they are questioned on it, just as you do not have the statement of any witness. That last sentence is because juries often ask, Can we have a copy of the statement, and the answer is given: you can't.

You do not have to resolve any conflict in the evidence and be sure about every point that has been raised or try to determine exactly what happened.

You are not detectives and you may think it would be a remarkable and exceptional case in which a jury could say, "We know everything about what happened in any case". Nor do you have to be sure of any motive or motives. Motives for criminal behaviour are sometimes complex and not always clear. You only have to make decisions on those matters that will enable you to say whether the defendant is guilty or not. Any decision you do make must be based only on the evidence and not speculation.

In addition to directing you as to the law that must apply, I also have the responsibility of summarising the evidence in the case. I shall remind you of the main areas of the evidence and essential issues and refer you to some of the evidence in relation to the alleged offence after counsel have addressed

you. I shall necessarily be selective. As I have said, it is for you to decide what is relevant and important evidence and what is not and the conclusions to be drawn from it. So if in my summing-up I fail to mention something that you consider important, take that evidence into account.

Conversely, if I refer to or appear to emphasise something you consider unimportant, attach no significance to the fact that I have referred to it.

You're the judges of the facts, I'm not. I don't have to make any decision in relation to the facts.

Delay. The events about which all witnesses give their evidence occurred 8 years ago. Understandably, reliance is heavily placed on the contemporaneous hospital records and notes made by the clinicians and nursing staff involved. Some witnesses have recollections of some of the events independent of what is recorded in the documents. Bear in mind that the passage of time is likely to have affected the memory of each of the witnesses, including the defendant, about exactly what happened and hampered their ability to recall all the detail of the events.

The defendant says she has no recall of any of the events and is reliant upon the information and the medical records and nursing notes. Take into account in her favour any disadvantage you find she had or may have had by reason of the delay when deciding her guilt.

Burden and standard of proof. It is for the prosecution to prove the defendant's guilty by making you sure of her guilt; she has no burden of proving her innocence.

Attempted murder. The defendant is guilty of attempted murder if, with the intention of unlawfully killing [Baby K], she unlawfully did an act or acts which was or were more than merely preparatory to killing her.

Acting unlawfully in the circumstances of this case is deliberately doing something that was harmful and she knew was clinically inappropriate.

The prosecution case is that at about 03.45 on the morning of 17 February 2016 the defendant was in the intensive care nursery, nursery 1, when she deliberately interfered with the endotracheal tube, ETT, through which [Baby K] was being mechanically ventilated, intending to kill her.

The defendant says she has no recollection of being in that nursery at that time or at all during the relevant shift but she

did nothing at all to harm [Baby K] and had no intention of harming her, let alone killing her.

If you are sure she did interfere with [Baby K]'s ETT, intending to kill her, and her act or acts were more than merely preparatory to killing her, then your verdict should be guilty. If you are not sure, your verdict should be not guilty.

The defendant's previous convictions for murder and attempted murder. In section 9 of the agreed facts on pages 12 to 13 behind divider 3 in your jury bundle is agreed evidence that the defendant was convicted of seven offences of murder and seven offences of attempted murder of babies in the neonatal unit of the Countess of Chester Hospital, committed between June 2015 and June 2016. The ages of the babies and the respective dates of the offences are set out in the table in agreed fact 37.

By law a person who is convicted of an offence shall be taken to have committed that offence unless they can show that it is more probable than not that they did not commit that offence. The defendant has said she did not commit any of the offences of which she has been convicted but has called no other evidence.

You are trying the defendant on the offence of attempting to murder [Baby K] during this period because the jury in the original trial was unable to reach a verdict on the evidence before them and were discharged from delivering one.

I repeat: you are trying the defendant on the evidence you have heard in this trial and your assessment of it. You have heard that the defendant has these previous convictions because the prosecution say that they show that she has a tendency to commit offences of this type and so it is more likely that she did attempt to murder [Baby K]. The defendant denies she ever harmed any baby, including [Baby K], or has any such tendency.

If she has satisfied you that she probably did not commit the offences of which she has been convicted, then you should ignore them. If, on the other hand, she has not satisfied you of this you then have to decide whether these convictions show that the defendant has a tendency to behave in the way alleged in this case, in other words attempting to murder a baby.

If you are not sure that her convictions do show that she has a tendency to murder and to attempt to murder babies then again you must ignore them. But if you are sure that the defendant's convictions do show that she has such a tendency then this may support the prosecution case that she attempted to murder [Baby K].

It is for you to say whether it does and, if so, to what extent but you must not convict her wholly or mainly because of those convictions. The fact that she has been convicted of the offences in the past does not prove that she has committed this offence on this occasion. Her previous convictions may only be used as some support for the prosecution case if, having assessed the evidence, you are satisfied that it is right so to do.

Verdict. As you may know, the law permits me in certain circumstances to accept a verdict that is not the verdict of you all. Those circumstances have not as yet arisen, so when you retire I must ask you to reach a verdict on which each one of you is agreed, guilty or not guilty; in other words, a unanimous verdict. Should the time come when it is possible for me to accept a majority verdict I shall call you back into court and give you a further direction.

All right? I hope that those are relatively straightforward. You have them in writing and you can, of course, refer to it when you are deliberating on your verdict in this case. So that's it from me at this stage.

I shall now ask Mr Johnson to address you on behalf of the prosecution.

Mr Johnson.

Closing speech by MR JOHNSON

MR JOHNSON: My Lord.

Good morning, ladies and gentlemen. Some good news -- and I'm not talking about the football last night -- it's the last time you're going to hear from me, which I'm sure some of you think is probably a good thing.

Lucy Letby is an extraordinary person. Not in a good way. She has murdered seven children, and if you go to divider 3 in your jury bundles and go to agreed fact 37, we can see what is, we suggest, a terrible list. It's at page 12.

[Baby A], murdered on the day he was born.

[Baby C], murdered when he was 4 days old.

[Baby D], murdered at 2 days of age.

[Baby E], he was 6 days old.

[Baby I] was about 11 weeks old.

[Baby O], 2 days old. And the very next day, his brother [Baby P], 3 days old.

And murdered all by Lucy Letby.

I have not forgotten [Baby B], [Baby A]'s twin, [Baby F], [Baby E] twin, [Baby G], the twins, [Babies L & M], or [Baby N], who she also tried to murder.

Thirteen separate children.

You now have to consider whether she also tried to murder [Baby K]. That, ladies and gentlemen, is the shocking and dreadful context of this case. The crimes themselves are wholly abnormal, but so too are the circumstances in which they were committed. From the first murder to the last was 1 year, 2 weeks and 3 days, because 2016, of course, was a leap year.

So cunning and devious was Lucy Letby that she managed to commit her campaign of murder and attempted murder undetected for all those months. We say that that tells you an awful lot about her as a person, how devious she is, and we say that you should take that into account when you are considering the evidence in this case, when you consider the records that she made, or in one case she didn't make, and when you consider what she said in interview and what she says now about what she said in interview. I will come to that in a bit of detail.

But even in that dreadful context, [Baby K], you may think, was the epitome of fragility: a tiny, tiny girl, born at 25 weeks' gestation, weighing 692 grams.

Seven tenths of a bag of sugar was her weight.

You'll remember, I am sure, Dr Gibbs' evidence that 22 to 24 weeks' gestation is the margins of or the limit of viability for a premature baby. That is why [Baby K] was a little girl that the text messages at the beginning of the sequence of events tell you was a source of great interest, not only to the other nurses on the neonatal unit but, most importantly, to Lucy Letby.

You might want to take that into account, we suggest, when you assess what Lucy Letby tells you now that she doesn't really remember very much. So it is, ladies and gentlemen, against that context, that you have heard the evidence of Dr Jayaram, who told you what he saw when he walked into nursery 1 of that unit at about 03.45 on the morning of 17 February 2016.

Lucy Letby's answer to the accusation?

"I don't remember, but it can't be true because that's not the sort of thing that I would do."

That's my paraphrase, obviously, of her defence.

Context. Context. Context. It's why the context is so important, isn't it?

"I don't remember, I wouldn't do something like that."

Without the remotest hint of irony, on nine separate occasions in her evidence, in an effort to give emphasis to her testimony, Lucy Letby referred to best practice, normal practice or common practice. There was nothing best or normal about Lucy Letby's practice, but it was, you may think, as proved by those convictions, common practice for her to sabotage infants that were entrusted to her care. And that is the context of the decision you have to make.

We've spent a long time listening to witnesses from the Countess of Chester Hospital, who back in 2016, you may think, were doing their best to care for sick children entrusted to their safekeeping by worried and anxious parents. And with one notable exception, the doctors and the nurses who cared for [Baby K] during her very short life did so to the best of their abilities and used their considerable skill and knowledge to maximise her chances of survival. Of course, the one exception to that is sitting in the dock.

From Dr James Smith, who helped [Baby K] to take her first breath of life on 17 February, through to Dr Danielle Gardner, who together with [Baby K]'s parents, made the difficult, but humane, decision to remove life support equipment and to allow [Baby K] the dignity of taking her final breaths cradled in the arms of her father.

But starting with the defence statement -- and during the course of the evidence in this trial, Lucy Letby's defence has attempted to focus a spotlight on alleged imperfections in the medical care provided to [Baby K] and it may well be, I don't know, but it may well be that you will be told how it is argued that any such alleged imperfections or alleged sub-optimal care or decisions made could have caused the repeated dislodgement of that ET tube, which destabilised [Baby K] at Chester and which lies at the heart of the evidence in this trial.

We began the evidence with the suggestion, made on behalf of Lucy Letby, that [Baby K] shouldn't have been born at Chester. That's a real red herring in this case, isn't it, ladies and gentlemen, and it is a complete distraction from the issues in

the case? It has got nothing to do with the reasons why [Baby K]'s ET tube kept dislodging.

What was the context of [Baby K]'s birth? Her birth was completely unexpected, wasn't it? [Mother of Baby K] was 24 weeks and 5 days gone. She had pains, she had a bit of blood, and so she went to the local hospital at Chester for a check, as anybody would have done, and she was found to be in labour. The medics were faced with a dilemma: they knew [Baby K] was very premature, they knew that her best chance of survival was to be born at a tertiary centre. As circumstances presented themselves, the risks to [Baby K], and probably also to [Mother of Baby K], of an ambulance journey to Preston -- Preston -- outweighed the risks of being born in Chester. And it seems that none of that is now disputed.

So there's no challenge, really, is there, to the fact that the Countess of Chester, the hospital and the staff, were presented with a situation in which they did what they should have done so far as managing the risks to [Mother of Baby K] and [Baby K] were concerned?

And following the delivery of [Baby K], and the stabilisation of both her and [Mother of Baby K], Dr Jayaram was doing his best to arrange the transfer of [Baby K] out to a tertiary centre; you will find that evidence in tiles 75 and 76. He could have done no more.

Dr Gibbs explained the monitors and the thresholds and the alarms on the monitors and he explained to you the difficulties that a child of [Baby K]'s size and gestation would have had breathing. It follows, we say, that moving the breathing tube of a child with [Baby K]'s characteristics would be very dangerous and potentially life-threatening, and to be fair, in her evidence, Lucy Letby accepted that, didn't she? She accepted that moving the ET tube in a child of [Baby K]'s gestation in the position she was in was "likely to kill the baby".

But one of the important things said by Dr Gibbs was that the quickest thing a nurse can do for a baby whose saturations are dropping, who has an ET tube, is simply to turn up the oxygen on the wall. It's obvious, isn't it, really?

He said that the appropriate intervention to dropping saturations depended on what help the baby was receiving at the time and that if this sort of thing happened with a baby who was on mechanical ventilation, as [Baby K] was, it was serious because the whole point of the ventilator was that it should have prevented that sort of thing happening in the first place. So he said:

"Turn up the oxygen and call for help. Or there's nothing with just calling for help straightaway."

The one thing that was not a reasonable option, ladies and gentlemen, was doing nothing. You may remember that Dr Gibbs' evidence on this issue was echoed from the nursing perspective by the witness Elizabeth Morgan, whose statement was read to you as agreed evidence. Elizabeth Morgan said this:

"In response to the specific question, given the gestational age of the baby, in my professional experience when observing a falling oxygen saturation level in a baby of this age and gestation, it would be standard and good nursing practice [where have you heard that before?] to immediately attend the bedside, to actively observe the baby, ascertain any cause for change in oxygen levels, and to take any corrective action, calling for help to alert other staff members of the situation if necessary. A series of checks will be carried out immediately to ascertain why the oxygen levels have dropped, for example has the tube become blocked or dislodged, has the baby developed a pneumothorax, or has there been an equipment failure?

"I do not believe that it would be normal nursing practice to wait and see if the baby self-corrected at this gestational age given the lungs are so immature and the risks associated with unplanned extubation. The incident should also be reported verbally to the designated nurse on her return and recorded in the nursing records and charts by Lucy Letby."

Do you remember what I said earlier about the -- it's not just the records that Lucy Letby makes, it's the records that she fails to make that give you a clue as to what was going on.

We will return to this, ladies and gentlemen, and you will recall in cross-examination, when we confronted Lucy Letby with that agreed evidence, she replied, "That's her opinion".

"That's her opinion." That's not an answer. It's agreed evidence. That's what should have happened.

It's not her opinion -- it is her opinion that that should have happened, but that is what should have happened. It can't be watered down by simply saying, "Well, that's her opinion".

On Monday, 17 June, 2 weeks ago, you heard from the consultant obstetrician, Dr Sara Brigham. Do you remember, she was taken to task on behalf of Lucy Letby and it was suggested to Dr Brigham that with hindsight she could have shipped [Mother of Baby K] out and saved [Baby K]. Well, the first point we make, ladies and gentlemen, is that anyone with hindsight would have shipped

[Baby K] out and [Mother of Baby K] out because there was a murderer working in the neonatal unit.

But just putting that to one side for a minute, the suggestion being made on behalf of Lucy Letby was both unreasonable and unrealistic. It was suggested that because the time lapse between the decision not to move [Mother of Baby K] and [Baby K]'s arrival would have been long enough for an ambulance to get to Preston, that meant that the decision not to move them was wrong.

You will remember, I'm sure, Dr Brigham's response.

I'll quote it verbatim:

"I don't think we could say that because she was lying in a bed. The act of transferring her to a trolley and into an ambulance may have caused the membranes to rupture. There was some change in the vaginal examination findings from when she first initially presented. We know that in term labour we expect progression of at least half a centimetre an hour, but preterm labour can go from 2 centimetres to fully dilated within half an hour. So based upon the fact that there was change from when she initially presented to this repeat examination, things can change very, very quickly. And as I mentioned before with a breech vaginal delivery, the cervix doesn't need to be fully dilated for the baby to start to deliver."

So you're left with that desperately awful mental image of a mother giving birth in the back of an ambulance on the M6, the feet of the baby having come out and the head being stuck in the mother. That gives you the context, doesn't it, ladies and gentlemen, for you to assess this criticism levelled at the doctors who were treating [Mother of Baby K]?

Like so many babies before and since, nature decided when [Baby K] was going to arrive. But why were these efforts being made on behalf of Lucy Letby seeking to persuade you that [Baby K] should have been born elsewhere and that the reason she wasn't in some way was the fault of the medics at the Countess of Chester?

Why were they trying to establish the scene set so long ago in the defence statement? Do you remember that document I read to Lucy Letby in the witness box, where she was alleging sub-optimal care, questioning whether [Baby K] should have been born at Chester at all, throwing the mud of incompetence at the doctors in the Countess of Chester, hoping that some would stick, with the underlying suggestion running through it all the time that Lucy Letby was being scapegoated to distract from the incompetence of the doctors in Chester?

Well, the reason that that was being done is obvious, isn't it? You don't need a barrister to point it out to you.

So that's the position up to birth. What about post-birth? The suggestions made on behalf of the defence was that there was some sort of shortcoming in care once [Baby K] was born at 02.12 and it continued when Drs Smith and Jayaram gave evidence.

You will remember, I'm sure, in cross-examination we took Lucy Letby to her defence statement in which she had suggested that the intubation of [Baby K] wasn't properly done. But she had to accept, didn't she, in evidence that that was irrelevant to the issue of why the tube moved? And that is the issue in the case. So why distract all the time with other things, noise around the edges of what really matters in this case?

Later in the prosecution case, the defence returned to the theme of sub-optimal care. They tried to build on the foundations that they had failed to lay with Dr Brigham when they questioned Dr Babarao from Arrowe Park. You will remember that under cross-examination on behalf of Lucy Letby it was elicited from Dr Babarao material concerning the ideal timing for the administration of surfactant to help lung function, the perfect ET tube width, and the percentage of the "high leak" calculated by the ventilator from the tube.

The figure of 94 for the leak was, as several witnesses said, a snapshot in time of one single reading. There are all the other indicators, including [Baby K]'s appearance and, particularly, her saturation levels, indicated beyond doubt that at that point, prior to the first incident, [Baby K] was very well oxygenated, optimally oxygenated.

So why concentrate on those issues, ladies and gentlemen? Are efforts being made to distract you from what are the real issues in this case?

There was questioning about Dr Babarao and his panel who had reviewed [Baby K]'s journey from before birth to the point of death and graded the level of care as "grade 2 or sub-optimal", having taken into account: her place of birth, there was no choice about that, was there; the delay in transfer, there was no choice about that from the perspective of the Countess of Chester staff; and the delay in fitting an umbilical venous catheter.

That review won't help you to decide whether Lucy Letby displaced [Baby K]'s ET tube, will it? It's a distraction and it was based, as Dr Babarao confirmed, on incomplete information. It was undertaken without sight of all the clinical and nursing

notes made at Chester, which recorded the full history of [Baby K]'s delivery, which recorded the care provided to her in her first day of life and the rationale behind many of the clinical decisions.

I'll give you an example, ladies and gentlemen.

You'll remember, I'm sure, Dr Babarao's surprise sitting there in the witness box when he heard that the alternative proposed venue for [Baby K]'s delivery, if it wasn't Chester, was Preston. Remember the look of shock on his face? "That's a long way", he said, "a long way".

None of those issues had anything to do with the competence of the staff at the Countess of Chester, and you will remember, another little thing that Dr Babarao said, that Dr Jayaram contacting the transport team an hour and 3 minutes, an hour and 5 minutes or so after [Baby K]'s birth was "very quick".

As for the delay in the siting of the umbilical venous catheter, can we go to tile 90, please, Mr Murphy? I won't go to the original here, ladies and gentlemen, you know the way this works now. If you need to go to the original you can have a look, but you can see at 03.35 Dr Kettle, who was the transport registrar, was giving the person coordinating this and making the notes the following message for the Countess of Chester doctors:

"Insert lines: UAC plus UVC."

So that's the direction from the transport team being made at 03.35.

If we go to tile 95:

"Passed on to Dr Jayaram at 03.41 and he was agreeable totally with all of the above".

What happened immediately after that note was made, ladies and gentlemen? You know, don't you? Lucy Letby was in nursery 1 with [Baby K], displacing [Baby K]'s ET tube.

The UVC was sited at 05.55, once [Baby K] had been stabilised. In arriving at the sub-optimal grading, the neonatal mortality review panel also took into account what they thought was a single "accidental extubation at Chester". You now know, because Dr Babarao told you, that since then they, or he, have found out that there were three such incidents.

So ladies and gentlemen, you are faced with this proposition, we suggest, that in seeking to distract you from who moved the tube and deploying evidence of sub-optimal care, the defence are

actually relying on the incidents that this defendant brought about to destabilise [Baby K]. So they are relying on the defendant's acts of sabotage to undermine in your eyes the competence of the staff at the Countess of Chester.

That's the context of this case, isn't it? Keep your eye on the ball.

The truth is that none of the factors taken into account by that review panel have anything to do with why it was [Baby K]'s tube kept moving.

We say that the events that define [Baby K]'s time at the Countess of Chester are best described as criminal, not sub-optimal. They are criminal because the ill-fortune that befell [Baby K] was as a result of the deliberate acts of Lucy Letby. So I'm going to turn to that question now and deal first with what happened at 03.45.

You'll understand why, although in the sequence of events it says 03.50, I am taking 03.45 as being the correct time because of the coincidence with the door swipe entry data for Joanne Williams at 03.47. So it had happened -- the critical incident had happened by the time Joanne Williams came back into the unit at 03.47.

By that stage, by 03.45, [Baby K] had been in the neonatal unit for almost exactly an hour. In that time Lucy Letby had got involved with her. We say that, ladies and gentlemen, because if you look in your white files behind divider 6D -- and this, for Mr Murphy's information, is tile 58, I think. Is it possible to bring up the original, please?

So it's the handwriting, isn't it, the handwriting point at 02.45? There we have, reading down that column, 02.45, all those entries, handwritten entries, and the words written in on the left-hand side of that table there at the bottom where the cursor is now, the handwriting of Lucy Letby.

But whose initials are missing from the bottom of the chart? "Nothing malicious, an oversight", was Lucy Letby's answer in cross-examination. Well, people do forget things, we all forget things, but in the context of the other evidence in this case and in the context of the fact that you know the person who made this oversight is a murderer, we suggest it is a little piece of evidence that shows two things: first, that Lucy Letby was very keen to get her hands on [Baby K]; but secondly, she wanted to reduce the audit trail, she wanted to reduce the number of documents that could be attributed to her in the lead-up to what she knew was going to happen.

According to the notes at 02.45 or thereabouts, Lucy Letby was in nursery 2 where she should have been.

She was supposed to be dealing with her own babies and, according to the records that she did sign, she was dealing with her own babies at the time she was making this note in [Baby K]'s notes. You know that, ladies and gentlemen, because of what it says at tile 52.

These are the notes for the child AR. If you click on that, please. If we look at the time Lucy Letby -- the computer recorded Lucy Letby making these notes between 02.36 and 02.50. So she'd opened up notes for AR in nursery 2, but was really in nursery 1 with [Baby K] at 02.45. Remember me saying how sly she is, how calculating and devious? That's the person you're dealing with, ladies and gentlemen.

She was so keen to get involved with [Baby K]: text messages in the lead-up, now you've got the record, the unsigned records, she has to accept were made by her.

How does that impact on your assessment of Lucy Letby's suggestion that she doesn't remember what went on?

It is a long time ago, 2016, it is. But she was first questioned about this in 2018, wasn't she?

Well, while that was going on, Dr Jayaram was organising [Baby K]'s transport, which we can see at tiles 75 and 76, which I think is at 03.15. Yes. And Lucy Letby, according to the records, if we go to tile 83, was feeding baby GT, her other baby in nursery 2. "Bottle offered" has been written in after the event, hasn't it, at 03.30? Devious. All trying to create the impression that this was taking time, because if it was taking time at 03.30, she wouldn't have been in nursery 1, in a different nursery, at 03.45, would she?

But we know that that's not true because, do you remember, we looked at the records for GT, this same child, at 06.30, so 3 hours later when GT was being fed again? And if you want to make a note of it, we looked at these documents as well, but they're all in the neonatal review, these ones. It's lines 226, 233, 234, 235, 236 and 237. In the middle of those tiles or those lines, I beg your pardon, you've got the feeding at 06.30, but you have Lucy Letby signing for other people's medication, all at the same time.

So what you have there, ladies and gentlemen, on the screen at 03.30 is this murderer's attempts to create the impression that she's somewhere else at the time that she is trying to murder a child.

Joanne Williams undoubtedly left to visit [Mother of Baby K] some time after she had ensured that [Baby K] was stable. There's no dispute about that, is there? But before she went, she had documented a lot of activity, all timed, as you will remember, at 03.30.

Of course, nobody can now say or could reasonably be expected to remember the order in which Joanne Williams did the various things that she has noted at 03.30. And what we have, just to remind you, I'll give you the tile numbers and the hard copy references, starting with tile 84, which is in your bundles at 6G. We've got the signing out of the morphine with Lucy Letby. That's the first thing.

The second thing is tile 85, which is 6D in the hard copy, the observations of [Baby K].

The third is tile 87 on the left-hand side, which is in your bundles at 6E, left hand side of that page.

Fourthly, tile 86, which is the right-hand side of the document at 6E, which is the neonatal fluid balance chart, on which, if we just look at 6E -- and if we can get that up, please, Mr Murphy, if we scroll down a bit, concentrate on the right-hand side of the page.

There we see that the morphine infusion was commenced at 03.30 according to the contemporaneous record, which ties in, you will remember, with the record that Lucy Letby signed with Joanne Williams for getting the morphine out at 03.30.

One of the things you might want to take into account when you are considering, if you think it's important, how accurate that record is is how much had gone through by 04.30: 0.35. The hourly dose, you will remember, was 0.34, which is on the prescription that's signed at 03.50 by Dr Jayaram.

We suggest that the idea that Joanne Williams was out of the unit by 03.30 and in the delivery suite is unrealistic. I'll give you another very good reason for that in a moment, but just bear that in mind.

Anyway, one bookend we've got is 03.47. That's an absolute time because that's recorded by the automatic data on the door swipe, so we know Joanne Williams is coming in at 03.47 and we know that this incident has happened by then. That is converted, with the start time of about 03.30, into a twenty-minute absence in cross-examination, and to be fair that's what Joanne Williams said, but it's completely unrealistic.

Do you believe for a minute that a child in [Baby K]'s exceptionally fragile state would have been abandoned by her designated nurse for 20 minutes? There's not a chance, is there? Particularly if you look at tile 93, if we could go there, please. This is swipe data for Caroline Oakley coming in. So Caroline Oakley is the other nurse in nursery 1, coming in at 03.40, so she was out of the unit.

Tile 94. Valerie Thomas also out of the unit, coming in at 03.40. So they're two down. Do you think the nurse looking after the most fragile of the children would have disappeared for 20 minutes with that set of circumstances?

It was some time after then that these two came back that Joanne Williams left, wasn't it? We know that for a very good reason. Tile 95, please. Could we click on the note, please? 03.41:

"Called Dr Jayaram back with the above plan."

This is the one we looked at before. Now, you will remember where Dr Jayaram says he was when Nurse Joanne Williams left the unit. He was sitting at the nurses' station, on the phone to the transport team.

This is a very, very precise note, isn't it, made by the transport team? They don't have a dog in this fight.

So this tells you, doesn't it, in conjunction with the door swipe data of Joanne Williams coming back in, that Joanne Williams was gone for 6 minutes or thereabouts? 03.41 to 03.47. And in that time somebody had to be looking after [Baby K]. Dr Jayaram told you who that person was, didn't he? It was Lucy Letby.

It was Lucy Letby because Dr Jayaram went to check and we know what he found. We know what Joanne Williams found when she returned. Two people in the room, according to Joanne Williams: Lucy Letby and Dr Jayaram.

No one else. Not Caroline Oakley, who had been out of the unit until she came back in at 03.40, not Sophie Ellis, not Valerie Thomas, who in any event wouldn't have been in nursery 1 because she, Valerie Thomas, was a band 4 nurse who wouldn't have had any hands-on action with a child of this gestation.

You know, don't you, you can infer from all the circumstances that Dr Jayaram is right when he tells you that it wasn't an alarm that caused him to go into nursery 1 because, if it had been, others would have been alerted by it as well. The fact that Joanne Williams heard an alarm at 03.47 does not undermine Dr Jayaram, it supports the prosecution case because the only

explanation for [Baby K]'s sats being in the 80s and there being no alarm is that somebody had muted the alarm. But you know from the uncontroverted evidence that if you mute the alarm -- do you remember how long it mutes for? A minute.

So you sabotage the child, you mute the alarm, it's bad luck for Lucy Letby that at that point Dr Jayaram walks in, but no surprise that by the time Joanne Williams is coming through the door, the alarm is sounding. So these facts are entirely consistent with the prosecution case, aren't they?

Do you remember what Dr Jayaram said about sats dropping down into the 80s? It takes at least 30 seconds, having moved the tube, for the sats to drop into the 80s, at least 30 seconds. Some of you may be able to see a digital clock in front of Mr Worthington there on the desk. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21.

22. 23. 24. 25. 26. 27. 28. 29. 30. And then the sats start to drop.

That had happened before Dr Jayaram went into the room. This is where the context is so important, isn't it? This is why we say you know what she has done to other children. Who but a murderer would do that to a child like this?

When Dr Jayaram had entered nursery 1, Lucy Letby was standing there doing nothing, watching this fragile child deteriorate. The tube had moved, hadn't it? It wasn't blocked. It had moved. Look in the nursing note, the nursing note that was put to Caroline Oakley as evidence that the tube was blocked. That was the suggestion being made in cross-examination. That's not what it says. It was "[Query] moved".

Ah well, it talks about bloody secretions and you can infer from that the defence, no doubt, will say that the tube was blocked. Well, that is nonsense and it is nonsense for the reasons explained to you by Dr Jayaram that if a tube blocks, it doesn't just block and go from being clear to blocked, it happens over a period of time, and as the tube is blocking, the saturations of the child would slowly be coming down. That's why the tube isn't blocked. There are other reasons the tube isn't blocked as well and that's desaturation 2 and desaturation 3, and we will come to that.

All it would have taken, ladies and gentlemen, was one simple thing: turn the dial on the oxygen. The fact that Lucy Letby didn't even do that, didn't call for help, even though she must have known, we say, that Dr Jayaram was at the nursing station on the phone, is clear evidence from which you can and should

infer that the reason [Baby K] was desaturating was because of Lucy Letby.

One of the issues that has come out is whether or not [Baby K] was sedated with morphine at this point. The fluid balance chart suggests she was, the controlled drugs stock book might suggest she was. If she was, if you agree, then that supports the prosecution case, doesn't it? Because, as a sedated child, the possibility of [Baby K] self-extubating would be very severely curtailed. But even if [Baby K] wasn't sedated at that point, the picture is clear because of the context.

So what did Lucy Letby say about all this when she was interviewed 2 years later? Well, we are going to suggest that what you witnessed last week was an extraordinary performance by Lucy Letby in the witness box as she tiptoed through the minefield that is her interviews.

It's no coincidence that when Lucy Letby was being questioned by her own counsel, she was asked a lot of questions which were designed to explain away the very clear concessions that she made to the police in interview. And we suggest that what Lucy Letby accepted in interview completely undermines the attack on the integrity of Dr Jayaram because in interview Lucy Letby accepted that she was in nursery 1 when Dr Jayaram walked in.

But from the witness box, she explained the inconsistency between what she said in interview and what she was telling you as being because she was "trying to be helpful". This devious murderer was "trying to be helpful". Well, that begged the question, didn't it, which was duly asked:

"Who were you trying to help?"

She wouldn't answer that question, would she? With all the skill of a politician, she tried to avoid the question because, if you think about it -- this was the point about asking her about her defence statement -- would she have been trying to help Dr Jayaram, do you think, having said in her defence statement that in effect he was out to get her? Well, she wouldn't have been trying to help Dr Jayaram, would she?

Would she be trying to help the police? Imagine the police officer saying, "You're under arrest for murder and attempted murder, now tell us your side". In that position do you think a woman like Lucy Letby would have tried to help the police get herself convicted? No.

As it happens, though, unfortunately for her, and this is the reason she won't answer the question about who she is trying to help, she didn't help herself either, did she? Because her case

now is that Dr Jayaram is a liar who has made it all up, and we say that what she said in interview completely undermines that as a viable defence.

Why would Dr Jayaram make it all up, ladies and gentlemen? You might like to think about that. This is where we come back to the supposed incompetence of the treatment that was given at Chester, isn't it? Is it being suggested that in some sort of effort to cover up his own incompetence Dr Jayaram is trying to stitch up Lucy Letby? That's not credible, is it, ladies and gentlemen? What has he got to gain?

When you're thinking about what she really remembered -- I know you know this already, but I have to say it -- when you're thinking about what she remembered when she was being interviewed for that first time, just remember tile 302. If we could just remind ourselves of it, please, ladies and gentlemen.

The very last tile. Friday, 20 April, 23.56, a Friday night in spring 2018 at midnight. What was Lucy Letby doing? She was searching for "[Surname of Baby K]".

Two years, 2 months and 3 days after she had last seen any [Family of Baby K]. [Baby K] had been admitted to that unit at 02.45 on the morning of 17 February 2016.

Lucy Letby went off duty at about 8 o'clock that same morning. By the time Lucy Letby returned to duty, [Baby K] had long since been transferred to Arrowe Park, and therefore Lucy Letby and [Baby K]'s paths crossed for five and a half hours at most. Five and a half hours, 2 years, 2 months and 3 days earlier, and here on a Friday night at midnight Lucy Letby was searching for the [Surname of Baby K]. Why?

Why was she thinking about the [Family of Baby K]?

Why were the [Family of Baby K] so memorable to Lucy Letby? The answer can only be because she had tried to kill [Baby K]. "I carry a lot of babies round in my head", she said to you. I bet she does.

Let me ask you, do you sleep at night? What alternative are you being invited to consider by Lucy Letby? There isn't an alternative. Remember the others she'd searched for? I won't go through the list again.

Do you remember in the opening address that was made to you on behalf of Lucy Letby when we first started the case? This was said on behalf of Lucy Letby, these very words were said:

"You heard about Facebook searches. Well, in due course in the evidence we'll take a look at that and see what kind of pattern there is or there isn't that applies to this case because that's what that refers to, so we'll look at it."

So that was the promise that was made to you. It wasn't delivered. We didn't take a look at what kind of pattern applies to this case, did we? Why do you think that was? Lucy Letby never offered you any alternative pattern to her Facebook activity. I say alternative because we've offered you a reason for it. No alternative offered. She simply says, "I don't remember". A bit like Dr Jayaram, isn't it? "I don't remember."

Go to tile 301. I'll show you a pattern, ladies and gentlemen. Tile 301. You see the date she murdered [Baby O] and [Baby P], the 23rd and 24 June 2016. What was she doing on a Friday night exactly a year later?

Look at the bottom. This 26-year-old woman, a Friday night, midnight. "I carry a lot of babies round in my head." That's a pattern.

The searches at tiles 1, 2, 3, 4, 5, 301 and 302.

You know what it says. The truth, ladies and gentlemen, is that Lucy Letby had a fascination with the babies she had murdered and attempted to murder and with their families. She took pleasure in her murderous handiwork, didn't she? And that is the reason that there is no examination of this pattern as part of her evidence.

So, ladies and gentlemen, with that in mind, and with it in mind that 11 weeks after Lucy Letby was searching for [Surname of Baby K] at midnight on a Friday night, we can see what she said in interview. So that search pre-dates the first interview by 11 weeks and this is the woman that says, "I don't remember".

So can we go, please -- I want to deal with two parts of the interview.

MR JUSTICE GOSS: Mr Johnson, I'm conscious of the time.

MR JOHNSON: I'm happy to have a break.

MR JUSTICE GOSS: There will have to be a break at some stage. I don't know how long you're going to be, but I think it's almost --

MR JOHNSON: It's not going to be 10 minutes. It's not going to be a long time.

MR JUSTICE GOSS: We'll have a break. The usual procedure, members of the jury. It'll be about 10 minutes, this break. Thank you very much.

(12.00 pm)

(A short break)

(12.10 pm)

MR JOHNSON: I'm sorry it takes so long to do this, ladies and gentlemen. I've got three subjects to cover, essentially. One is the interviews, then desaturation number 2 and desaturation number 3, and I'll deal with 2 and 3 pretty quickly because the points are probably obvious to you, but I'm sure you understand, because it's a public hearing and because everybody needs to know that you have in mind the points that are to be made on both sides, it's necessary for me to go through the points, probably at greater length than you really need, but form is important as well.

Can you go to interview 1, please, which is behind divider 7? The bit I'm going to play you, if you want to mark it, I'm not suggesting you should, you can see at the top of page 2 there's a very long dialogue from the police officer, which starts with the caution. But if you go to that very long statement and count up five lines, at the end of that fifth line up from the bottom you'll see:

"Okay, so that first event at 03.50, a consultant saw you."

I'm going to play from that point and then I'm going to play down to Lucy Letby's response about a dozen lines or so further down, which starts with:

"Or whether I was covering for someone who was on a break."

I'm just going to play that first of all.

(Video played to the court)

She did not say, "I do not recall being in the nursery", did she? That's her position now: "I do not recall".

This is 11 weeks after that Friday night at midnight where she had been searching on Facebook for "[Surname of Baby K]". She had not forgotten what had happened in those 11 weeks, had she? It's just not credible.

If you look to the second part of her answer:

"Or whether I was covering for someone who was on a break."

That's an interesting turn of phrase, isn't it?

Joanne Williams had gone to see [Mother of Baby K], she was covering. It's exactly what Dr Jayaram says he was told by the departing Joanne Williams. Is that just a fluke, a bit of bad luck for Lucy Letby, or does it tell you that she remembers very well and she was hedging her bets? "What have they got on me?" If she commits herself "I wasn't there" and two or three witnesses say she was there, she's got a problem. So that's the first bit.

She went away, she was released, and came back almost a full year later. If we go to divider 8, we've gone from 5 July 2018 to 12 June 2019. Put yourself in her shoes. You've been questioned by the police at length, relating to alleged murders and attempted murders of many children in your occupation as a neonatal nurse and they let you go for almost a year.

You'd think long and hard about what you were going to say, wouldn't you? You really would.

Well, if we go to -- you see at the beginning -- I'm not going to play this bit, but page 1. The police summarise the previous interview, just next to 4476:

"During your first interview regarding [Baby K], you said you couldn't recall why you were working in nursery 1 with [Baby K]."

Which is a direct lift from her answer, isn't it?

Answer: yes. Not, you couldn't recall being in nursery 1. So she knew, she had known for a year by this stage what the allegation was. With that in mind, can we go to page 5, please?

There is all sorts of material in these interviews, ladies and gentlemen, that undermines Lucy Letby's account. I'm not going to deal with it all because I know you've got -- but go to page 5 if you would, please. I'm going to pick it up at the bottom of page 5, six lines up, where it says:

"Joanne Williams before she goes to update the parents in her evidence said [Baby K] was fine."

What I'm going to play to you is the bottom of that page, the full page on the next page, the full page on page 7, and right to the end of page 8. This, with a year's reflection, is Lucy Letby accepting that she was there. That's our case. If we can play this, please, Mr Murphy.

(Video playing continued)

Barristers can stand here all day and try to persuade you that something means something or doesn't mean something. There it is, ladies and gentlemen.

You're old and wise enough to make up your own minds what she's saying there, but you know what our case is.

Those bits of interview and other parts that you can examine in due course, if you need to, show that the attack on Dr Jayaram and his integrity is designed to distract you from the issues.

In interview we say Lucy Letby was acting a bit daft, suggesting that she thought that the note made by Mel Taylor after handover, who Lucy Letby knew had been on the day shift, related to the desaturation that had happened at 03.45 in the morning. That's on page 4 of interview 1. Do you remember? That's where this reconstruction of what she really means in this interview started when Lucy Letby gave evidence. She was taken to that first and then, from that, we had this development, the tiptoeing through the minefield as I have described it, where she's trying to persuade you that what she's saying there isn't actually what she meant at all. It is nonsense. She was lying to you and there is only one reason for the lying, isn't there, in this context? So that was the interviews.

The other two desaturations. Desaturation number 2.

They are important, ladies and gentlemen, because of their coincidence with the presence of Lucy Letby, because she was there. The circumstances surrounding the second incident between 06.15 and 06.30 aren't entirely clear. None of the prosecution witnesses remember how this event was brought to their attention.

But we point to the incontrovertible fact that it happened within a few minutes of Lucy Letby being provably at [Baby K]'s incubator. This is in the context of her children being in nursery 2.

So we can prove she was in nursery 1 at the time or about the time this happened. You will remember that the way we prove this is through the booking-in record to the neonatal unit. You'll remember that Yvonne Griffiths, Nurse Griffiths and indeed Lucy Letby confirmed this herself in evidence and said in order to have booked [Baby K] in on the computer, Lucy Letby would have had to go into the cot or to the incubator to get the handwritten notes to take back to the computer to copy across what was in handwriting into the digital record.

That digital record was opened by Lucy Letby at 06.04 and it was completed at 06.10. You've got that incontrovertible detail at tile 152. We can look at it.

There you have it. The start time and the end time.

Those are what I have referred to before as bookends.

If we go back a tile to 151, we see that the radiologist Anne Kember arrived at 06.09, so a minute before Lucy Letby finished the digital record. The X-ray would have taken 10 to 15 minutes, that's the agreed evidence of Anne Kember, and we know from tiles 152 and 156 that a blood gas was taken at 06.24. The blood gas was taken in response to the desaturation. So that's the other bookend, if you like. So it had all happened by 06.24.

In between those times, the X-ray shows that the tube is in the correct place and yet, within a few minutes of the X-ray, [Baby K] desaturated. At some point in this process Lucy Letby would have had to have gone back to the incubator to return the notes, wouldn't she?

The perfect cover for further sabotage.

The other relevance of this incident, ladies and gentlemen, is because of a bit of evidence Joanne Williams gave you. You will remember that when Joanne Williams came, she was cross-examined about a witness statement and a recorded statement that she'd made to the police in 2018, all right? There were the following questions and answers in 2018. This was all read out, these were the questions and answers that happened in front of the you in court.

Under questioning on behalf of Lucy Letby -- and this is talking about the first desaturation. You'll wonder why I'm talking about the first one, you'll see in a minute. So in relation to the first desaturation:

"Question: Your recollection, Nurse Williams is when you came back, which is around about 03.47, or at 03.47 from the door data, an alarm or alarms were sounding. That's what you remember?

"Answer: That's what I've written in my statement, yes.

"Question: That's what you wrote in your statement. I'm going to go to other parts of the description. You remember Dr Jayaram being present in or about the area when you returned, don't you?

"Answer: Yes.

"Question: And he was saying things like, what happened, how's this happened?

"Answer: Yes.

"Question: If there's any mystery, again you made a statement on 10 April 2018, so a lot nearer the time than now?

"Answer: And I remember him asking me that.

"Question: What happened, how's this happened? And in fact you said, I don't know, I wasn't here, I was with the parents?

"Answer: Yes.

"Question: And he was also asking you who was in the room at the time the alarms went off. That's something he asked if it assists.

"Answer: Yes, he did.

"Question: Yes. You remember him asking you who was in the room at the time the alarms went off?

"Answer: Yes."

This, of course, is being deployed to discredit Dr Jayaram's account of the first incident, which is a complete red herring if Lucy Letby accepted that it is true in the interviews, isn't it? Let's put that to one side for a second. Looking at that series of questions and answers of Joanne Williams, there are a number of possibilities and we suggest you may want to consider them.

One possibility is that when, 2 years later, she spoke to the police, Joanne Williams has confused parts of the second desaturation with what happened during the first desaturation. We suggest this would make perfect sense, that she's confused, because no one who responded to the first desaturation is suggesting that they were alerted to it by the alarms. Additionally, the words attributed to Dr Jayaram by Nurse Williams would make perfect sense if they were said after the second desaturation, wouldn't they? Because -- this will have occurred to you -- Nurse Williams' account of walking into the room and seeing Lucy Letby and Dr Jayaram reviving [Baby K] after the first desaturation makes no sense with Dr Jayaram then turning round and saying, "Who was in the room when the alarms went off?" whereas if it happened after the second -- if Dr Jayaram was making an enquiry with his suspicious mind about Lucy Letby after the first one, is making enquiries of Joanne

Williams after the second desaturation, which no one now remembers the detail of, that makes perfect sense. So it's a matter for you.

Desaturation number 3. This is, we suggest, very important. It happened at handover and Lucy Letby claims now not to remember anything about it, and we say that that is a tactical amnesia because if she admitted she did remember it, she would have to explain to you how she came to be in nursery 1 at all. So that's the problem that she knows she will have to deal with if she accepts that she can remember the final desaturation.

So let's look at the context, ladies and gentlemen.

Back to context, my favourite word.

Here we have an event involving an enormously fragile infant, who had been the subject of nursing tittle-tattle, she was really interesting to the nurses for entirely legitimate reasons. Then, less than 6 hours after her delivery, there was Lucy Letby appearing to save the day when [Baby K]'s ET tube slipped in 1.5 centimetres, more than 20% of the length that it should have gone down at a time when [Baby K] was undoubtedly sedated with morphine. How on earth could that happen?

You will remember, I'm sure, the evidence of Dr Kamalanathan, one of the transport team, it was read to you, the ET tube never moved after this third incident.

Well, [Baby K] didn't move her own tube, did she, ladies and gentlemen, on this third occasion? So how on earth did it move? It was moved by the child murderer in the dock who wanted to get some sort of credit for saving [Baby K]. She was making it look like [Baby K] was a habitual tube self-mover to cover her tracks for what she'd done earlier, wasn't she? Let me remind you how devious she is.

She knows, does Lucy Letby, that Dr Jayaram had walked in on her in very suspicious circumstances.

Dr Jayaram is asking questions, apparently. So we have this third incident. [Nurse B]'s evidence was uncontradicted and unchallenged. It's for you to decide, but we suggest that in reality [Nurse B] evidence was accepted by the defence. If that's right, it's very important because it proves the following points.

First, that at a time when Lucy Letby would be expected to have been in nursery 2, she was in nursery 1. She was about to hand over two infants in nursery 2, but she's in nursery 1. Second, she was in nursery 1 when she had no reason to be in nursery 1.

Third, she wasn't summoned to nursery 1 by an alarm or by any other nurse. Fourth, yet again [Baby K] was desaturating and the tube had moved. And fifth, all in circumstances where [Baby K] was undoubtedly sedated.

This incident happened 3 hours and 45 minutes after the first desaturation. You may think in many ways it's very, very similar to desaturation 1, except Lucy Letby shouted for help and, second, she actually did something to help [Baby K] before assistance arrived. That makes the point, doesn't it? That is what should have happened.

Can we just have a quick look at the floor plan of the neonatal unit? It's at tile 36. You've got it behind divider 4 of your jury bundles, ladies and gentlemen. It may be easier to look at divider 4. Just look at where nursery 2 is in relation to nursery 1 and where the doors are. Just look at where the nurses' station is where all the nurses were gathering for the handover. How did Lucy Letby get into nursery 1? She must have gone past all the others, mustn't she?

Particularly if she had been in nursery 2, which is where she should have been.

This is why she claims she cannot remember, because she knows that if she does claim to remember we will ask these questions and she doesn't have an answer for them.

Well, you heard her. You saw her. You saw her demeanour in the witness box. We allege that she was clearly lying about this final incident, just as she's been lying about so many other things and we suggest, respectfully, ladies and gentlemen, that when you look at the whole picture in context, the evidence taken as a whole clearly establishes that Dr Jayaram was telling the truth and if you agree with that then we respectfully submit that the only proper verdict to this single count on this indictment is one of guilty.

That's it. Thank you very much for listening.

MR JUSTICE GOSS: Thank you, Mr Johnson.

Mr Myers, I would like to start, but choose your moment when you want to break off at a convenient moment rather than being tied to the minute.

MR MYERS: To assist you and the members of the jury, my Lord, I'll be about an hour and a half in total. I'm not going to do a hour and a half right now, but maybe 20 minutes or so and then

at a suitable spot we can break -- or maybe half an hour or so, if that's all right, I can break and finish off after lunch.

MR JUSTICE GOSS: If that's better than -- rather than breaking off at around 1.00 and --

MR MYERS: If there's a natural point at 1.00, I'll stop there.

MR JUSTICE GOSS: But if not, go on. I don't think we want to go on much beyond 1.15.

MR MYERS: It's just finding a point where there's a natural break.

MR JUSTICE GOSS: Exactly. If you can find a natural break between 1.00 and 1.15, take it. I won't interrupt you.

Closing Speech by MR MYERS

MR MYERS: Ladies and gentlemen, there's a reason why you are here. You're not spectators. It might feel like it a little bit, but you're not. You decide whether guilt has been proved so that you are sure. You decide that, not the state, or the prosecution, or the Crown, whatever they call themselves, you decide it. The state doesn't decide.

His Lordship doesn't decide, I don't decide, no one decides but you. And that's critical. Because anyone who thinks this is a done deal is wrong. You know it's not a done deal. This is a trial by a judge and jury and only you decide this. Why? Why are you trusted to do that and not the state, for example, not the prosecution?

You will make a fair assessment of the evidence according to that oath you took at the start of this case because you are in a position to bring balance and real world judgement to this case and you can work out what is credible and what is incredible. I will suggest to you what is incredible and that is the evidence of Dr Ravi Jayaram, which sits right at the heart of this case. You're free to disagree with me if you want to, but I'm going to suggest to you it is incredible. It is incredible, isn't it? Isn't it? Think about it.

The prosecution have rather deftly skirted around Ravi Jayaram in their closing to you, which is surprising because I'm going to remind you of what they said in opening their case to you. They said this at the end:

"Ultimately, ladies and gentlemen, ultimately this case may come down to a single issue. Do you believe what Dr Jayaram says he

saw? Are you sure? Will you be sure that he, when he gives you his account, is telling you the truth about what he saw?"

That's the tune the prosecution were singing at the start before they watched what happened to their case and Dr Jayaram.

It comes down to a single issue. Yes, it does.

They were right about then, they may not want to say that now, but that's what it comes down to. You'll remember what they said, how Lucy Letby was caught virtually red-handed by Dr Jayaram. Caught, in effect, red-handed by Dr Jayaram. Caught almost red-handed by Dr Jayaram. Really? Really? Well, that's his evidence, isn't it? You've heard it, including on national TV.

All right then. Answer this question. If what he says is true what would you do? What would you do, you?

What would you do? Are we going to disregard that because she's been convicted of a load of serious offences in the past? It's a simple question, isn't it?

You are entitled to ask it and answer it, members of the jury. As his Lordship's direction said this morning, you bring to this case and you apply your knowledge of human behaviour and how people act and react, and that doesn't just apply to the person the prosecution would like you to convict, it applies to the person they say their case pretty much depended on at the start of this trial.

You apply your knowledge of human behaviour and your common sense. So if Dr Jayaram is telling us the truth about what he saw and what he thought in the early hours of the morning of 17 February, what would you do?

You're a senior consultant, you are one of the leads for the unit and you believe someone is killing babies and trying to hurt them. What do you do? You get the police. You tell the management. And if they drag their heels then you tell the police. It's not rocket science, ladies and gentlemen, you don't need to be a paediatric consultant with however many qualifications to work that out. "We didn't have the training".

Utterly ridiculous, and you're expected to swallow that by him, by the prosecution. "We didn't have the training". Pathetic.

A child would know what to do. If Dr Jayaram really saw what he claims he saw and really thought what he claims he thought, you know he would have got the police and he would have got her out. The only sensible reason for him not doing that is that events

were not as he went on to say they were 14 months later once this whole process had commenced.

We say there's a calculation by the prosecution in this trial. We say the prosecution are working on the basis that those previous convictions will lead to a conviction here come what may. If there's a prejudice -- because, let's face it, who's going to care? That's what we say. Well, if we are here to rubber stamp an allegation just because of what Lucy Letby has been convicted of already, it isn't going to be a fair trial, is it? It's not really going to be a trial at all if you're not going to look closely at the evidence. We are confident you will, ladies and gentlemen. You are the ultimate safeguard against that happening.

The prosecution are here to give you their theory and that all that it is, a theory. The point of this process is to test what is no more than a theory.

Whether anyone likes hearing me say that or not, that's the point of this. Ms Clancy and I are here to defend Lucy Letby and that is what we will do, standing up for her when no one else is going to do that, and his Lordship is here to ensure the trial is conducted properly and according to the law, and we all follow his directions according to that, but for this to be a fair trial and for there to be a fair outcome according to the evidence, the evidence, that comes down to you.

Because it is you, not me, not his Lordship, not the state, not the prosecution, not anyone else in this courtroom who decides. We say the medical evidence and general circumstances relating to this allegation do not get us close to being sure of Lucy Letby's guilt and you can judge what I say about that in the time I'm going to address you by the evidence.

That's what I ask you to do: by the evidence. But you know the facts and it may be possible to hazard a guess that if it wasn't for those convictions, nobody would entertain the likelihood that Lucy Letby is guilty of this if you took them out of the equation. No one.

It's the evidence, isn't it? The evidence of Dr Ravi Jayaram that is central to this. It is. It's no good the prosecution ducking and diving round that now or inventing -- inventing ways of getting round the evidence of Joanne Williams. I'm going to come back to that. They're not getting off that point lightly.

Her evidence is utterly clear. When she came back on to the unit after seeing the family, Dr Jayaram didn't have a clue what had happened. No one suggested otherwise. You have just literally seen the prosecution invent an explanation to avoid what her

evidence does to Ravi Jayaram's account. You have just seen it. It is stunning in a bad way.

Dr Jayaram's evidence is central to this allegation and we say, the defence, at the outset that it is an insult to the collective intelligence of everybody in this courtroom for him to stand there and claim that he saw what he says he saw and thought what he says he thought and do absolutely nothing, and that's okay, that's explicable, reasonable. We say that is ridiculous and it is unbelievable.

I repeat, ladies and gentlemen, what I said right at the start at the beginning of this case, that nothing that I say on behalf of Ms Letby is intended to disregard or diminish the grief of [Baby K]'s family. Emotion and sympathy is natural to all of us, but that would never make it right to convict somebody unless there was powerful and compelling evidence to make you sure of their guilt. So we've got to look at that evidence and the logical conclusions to be drawn from it, not prejudice, not guesswork, not speculation.

I'll give you an example right now where we've had all three of those in questions from the prosecution.

I don't know if you noticed it. Baby KC. Remember?

The one who self-extubated in intensive care nursery 1.

Well, he did do, self-extubate, so much for babies in that nursery struggling to self-extubate; he did, it's in the neonatal review. And it was pointed out to you when the prosecution were cross-examining Lucy Letby, in the notes to do with KC a long line had come loose from the catheter. Do you remember this? They actually said to Lucy Letby: did you do that? In front of you they said: did you do that? Out of nowhere, on the basis of no evidence whatsoever, and that is an allegation, of course it is. It's designed to put the idea out there: oh look, we've spotted a baby where there's -- putting aside self-extubation, there's a catheter that's come loose. That's what it says.

That's all it takes.

Once you've got someone like this with a shedload of previous convictions like this, you can say what you like, can't you, and expect you to accept it? Lest be there any doubt, there's absolutely no evidential basis for that. An investigation running about 6 years.

Nothing in this case to support that. Unfair. Deeply prejudicial. Proving absolutely nothing.

The same people that have invented an explanation to try and get round the damage that the evidence of Joanne Williams does to Ravi Jayaram. Keep that in mind when you're being lectured to about the defence distracting you when we're doing what is our job to do.

It's not a distraction. Extraordinary. But it demonstrates, doesn't it, how an allegation can be made of just about nothing? Let's keep that in mind when we get to the two events that follow event number 1. We'll get there.

One of the things that is happening here -- and it's easy for the prosecution to do because of the previous convictions -- is the application of very, very different standards to Lucy Letby from any other nurse on that unit. So you're being invited to assess her by standards that don't apply to anyone else. The fact that Lucy Letby goes to assist a baby in a different nursery when it wasn't allocated to her is treated as matter of the utmost suspicion, but we know from the neonatal review that nurses are moving backwards and forwards across different nurseries all night long.

Nothing unusual about that. You've heard from the nurses they help one another. Lucy Letby filling in entries on charts for a baby designated to another nurse. Well, there's nothing unusual about that.

Propositions being put to you based on timings entered by Lucy Letby as if they're all precise, trying to pin her down to where she was. We know, save for some of the electronic self-populating forms and that controlled drugs book, they are not precise. Some of them could be anywhere in a period of about an hour.

Can we put up, please, tile 191? This is the one where Lucy Letby hasn't signed the entry if you look down at the bottom on the left-hand side. Lucy Letby doesn't sign that entry and you're told that -- to reduce the audit trail. Well, seriously? How is that reducing an audit trail? It's her handwriting.

Joanne Williams knows she hasn't signed it. It's obviously hers to those who know it. And what's the point of reducing the audit trail? If she'd signed it what difference would it make? These are suggestions thrown out as if they prove something. Not signing it.

Well, let's have a look then at tile 180, please, Mr Murphy, where we see the equipment chart, the IC equipment chart, Lucy Letby not having signed this.

If you just look at the left-hand side, which deals with equipment, and we can see, just looking at this, there's three entries, or maybe one long entry, on the right-hand side at the bottom. That's not been signed for. We know Mel Taylor was looking after [Baby K] at this time. It's nothing to do with Lucy Letby. Is this evidence of Melanie Taylor reducing the audit trail?

Of course it's not. We can apply different standards to Lucy Letby, can't we? That's the way that works.

A different point. Lucy Letby adding something to an entry at tile 83, please, Mr Murphy. This is the (inaudible) document, tile 83. You see "bottle offered". That was pointed out. In effect, a document being doctored by Ms Letby for some sinister basis.

Well, sometimes things are added, things are changed.

Let's look at Ravi Jayaram's clinical notes at tile 49, page 2. Scroll down if we could, please. Look at that. First time he put in for the deterioration at 03.30. Scribbled out. 03.50. Wow. Imagine if Ms Letby had done something like that on such a crucial timing? This is the star witness, Dr Jayaram. He didn't even get the timing right when he came to do the notes at 04.50 that morning. It's different standards, isn't it, ladies and gentlemen, for Dr Jayaram to do that? I'm not suggesting anything necessarily turns on that, but at this point I'm just pointing out. Writing "bottle offered" is a matter of the utmost suspicion.

Scrubbing out the key time and putting in a different one, that's fine.

Memory. Memory. No one else in this case, ladies and gentlemen, is expected to perform the feats of memory with respect to entries on documents and events that took place that Ms Letby is expected to perform.

I don't expect you to be having sympathy with her position. We know what she's been convicted of and what she faces for that. We know that. I'm not asking you to feel sorry for her in that way, that there's something wrong in that way. All I'm doing, as I'm sure you understand, is identifying things that we say make this so unfair, evidential matters you should keep in mind as we look at what did or didn't happen, and memory. Only she is expected to have the recall that the prosecution criticise her for not displaying.

We had a statement from Caroline Oakley read to you.

Caroline Oakley looked after two babies who were in nursery 1, in [Baby K]'s nursery, and it was read to you that she has no memory of [Baby K] on that shift at all, no memory of the desaturation. So whatever Nurse Oakley was up to and wherever she was and when, she must have been in nursery 1 for much of the time that night, but it's fine for her not even to remember, it seems, just about anything, but not for Lucy Letby.

The morphine. I will perhaps just finish with this and then we can take a break and I'll turn to Ms Letby's evidence a bit more closely. The morphine. Let's just look at this now because we say it's a factor in the case and we see a lot of the manoeuvring that's gone on from the prosecution with this.

We suggest to you, ladies and gentlemen, the evidence does not support the suggestion that [Baby K] had been sedated at 03.45 or around that time. Certainly, the test is can you be sure and certainly we're a long way from being sure of that and we have good reason to find she wasn't. We say, if we're talking in the language of distraction that the prosecution have introduced into this, if we must descend to that, since that's the way this has been put about, we say the prosecution have good reason to try to get down to 03.30. Even you see them trying to get their own witnesses to say 03.30 when they're not happy doing that. You have seen them trying to do that when the witnesses don't feel comfortable about it. And why?

Because I am going to suggest it suits their case, doesn't it, if they can somehow make it that [Baby K] was sedated at 03:30? Even though that's against what the written prescription says, it suits their case to try and nudge it that way because they would say she's less likely to self-extubate, and she would be less likely to self-extubate.

Also, ladies and gentlemen -- because, if you remember, and he was asked about this, when Ravi Jayaram first did that statement to the police in April 2018, he was saying, sort of backing up his account, that [Baby K] had been sedated and he relied upon that as part of the reason why this was all very suspicious. Well, it's beyond suspicion, isn't it? He said it shows there had been a deliberate dislodgement. I'm going to come to Dr Jayaram at the end of this, giving him the focus he deserves as the prosecution's fundamental piece of evidence.

Well, what can we say about the morphine? Let's have a look, a relatively quick look, just at the evidence in some kind of order and you can judge what I say from the evidence. Ladies and gentlemen, you've spent 3 weeks paying incredibly close attention to it, so all I ask is judge what I say by that.

Can we just start with tile 84, which is the controlled drugs book. Let's try and work our way through this. This is, as far as we can tell, a time we can be pretty confident about because, as Joanne Williams said, this is something that's filled in when that syringe is taken out of the fridge, which, to state the obvious, is cold, and that is why the morphine is not generally given straightaway, they like it to warm up for obvious reasons.

But that's what we have there. No more than that.

That what's it shows. It was taken out of the fridge at 03.30 and that's consistent, isn't it, with Joanne Williams getting it out and then going to see the family for however long she went and letting it warm up to do it when she came back? She and Dr Jayaram agreed that is something that could have happened and is certainly consistent with the timing elsewhere.

Let's move, if we may from, that to the IC fluid chart at T86 and look at both sides of this chart now, ladies and gentlemen. The entry the prosecution have lavished attention on -- on the right-hand side do you see how the times are banded? 03.30, 04.30, 05.30, 06.30 and so on. You will understand ladies and gentlemen, we are confident from the evidence you've heard, those are not precise times, they are periods within which observations are taken. It's as simple as that. It's not precise, they're a band of an hour or so.

The prosecution will not accept that, even when their own witness had indicated these are not precise times. Having first of all chosen to accept what their witness says, they have then tried to work out some kind of flow rate calculation, ignoring what their own witness said about "this has got to be approximate because it doesn't account for interruptions". Do you remember Joanne Williams said there might be interruptions in the flow for one reason or another, the treatments that had been given, she can't say how regular it is.

But she was invited to conduct a calculation in effect on the hoof to try to work out what the flow rate was when we don't even have a sound basis for it. And you understand why the prosecution are so keen to do this. They want to take that figure of 0.35 at 04.30 and say, "Well, look, that was the rate for an hour, so it must have started at 03.30". That's what they're trying to do. You will know, given the approximate nature of these times, if morphine had been given at 03.50 on an infusion, which is what the doctor's prescription actually says, 03.50, then that's consistent with an entry at 03.30 because it's in that bracket. And if, as it happens, 0.35 had gone through an hour later, that would be consistent with the entry at 4.30 because 04.30 to 05.30 includes 04.50. It's really very simple.

It's not a safe process to start trying to treat those as fixed times or try and work out what this flow rate is. If any of you want to, ladies and gentlemen, if you look at that flow rate you'll see it's not even uniform, it's not even a uniform flow rate on those hourly divisions. Do you see that? It doesn't go up by the same amount each time. 0.35 isn't followed by 0.70.

Some of them are bigger, some of them are smaller. We don't know when the timing was taken.

If we look across on the left-hand side of the chart, under the equipment section, we've got a note that was put in by Ms Letby. Joanne Williams has accepted this, down at the left-hand side:

"03.50 morphine".

Okay? No mystery to that. Joanne Williams agrees there's nothing odd about that. It's her baby, it's her chart, she can see what's being written there. We've got the prescription by Dr Jayaram. Can you put up tile 104, please? It's there, the infusion, written by him.

03.50. One of the few points of agreement between us and Dr Jayaram, ladies and gentlemen. He agreed here, as he did the last time he dealt with this, that absolutely, he said, the infusion started at 03.50. It has to, doesn't it? It can't start before the prescription has been dealt with. We've got the record for the injection at tile 102. Can we scroll down, Mr Murphy? Can you see, ladies and gentlemen, it might have been written up at 05.15, but it's got:

"Administered 03.50".

This is the morphine injection, 03.50. Any more to help us with this, dealing with the evidence rather than trying to attempt to calculate flow rates on imprecise data with a witness who's unhappy doing that? Let have a look at what that witness said in her nursing note at tile 132 and let's just have a look where morphine fits in with the order of events. I'm not suggesting it's absolutely perfect, but let's just have a look. We go to tile 132. Scroll up. That's the Joanne Williams note between 04.48 and 05.07.

If we go to the "commenced SIMV" about eight lines down. It's got the ventilator details:

"High leak noted. Approximately 45 minutes later, began to desat to the 80s."

It says the 80s here.

"Dr Jayaram in attendance. Query ETT dislodged. [Further details]. Large amount bloodstained oral secretions."

Carrying on down:

"Cannula inserted by reg Smith. Commenced 10% dextrose. Commenced morphine. Bolus given on intubation."

Do you see that, where that fits into the flow of events? Well after, it appears. The query ETT dislodged and fitting in with the timings we have and the sequence we know took place, chronologically the way this happened.

That's consistent, isn't it, with what Dr Smith said when asked about this when he said he wouldn't give morphine to a baby prior to the initial intubation? He wouldn't. And in fact Dr Jayaram didn't take issue with that. So we can take that down, Mr Murphy, thank you for going through those.

We know the 03.30 in the control book is precise, but that only tells us when it came out of the fridge, and that's consistent with the evidence we have, which is that in the ordinary course of events the nurse would leave it to warm up and, in the case of Joanne Williams, that fits with her leaving it like that when she goes to see the family, which took about, on her timings, in fact about 17 minutes, because much nearer the time of this investigation she gave 03.30 as the time she went to see the family, she said that some years ago, and we know from the door swipe data she comes back about 17 minutes later.

So she's gone a while, talking with them, updating them, dealing with the issues she does. Her recollection in fact was that it would have been about 20 minutes. The prosecution acknowledge that and then won't have it. They just won't have it, not because the witness doesn't say that it doesn't fit with their theory. So just like we had about 40 minutes ago, a wholly new version of what Joanne Williams said, that all the confusion was maybe when she came back after the second event. We know it wasn't.

We also have: well, maybe when she says 20 minutes, I know it's her evidence. I know she made a statement nearer the time, I know we've got the door swipe data, but maybe it wasn't. Well, maybe all sorts of things if that's what they want. It may be, ladies and gentlemen, that you are able to look at it on the basis of the evidence. 03.30, Joanne Williams goes. The morphine is left to warm up. We know round about that time Ms Letby is dealing with feeds and observations for baby GT.

That's where we get to on those times.

In fact, with regard to her and the evidence, and looking at the timing now, ladies and gentlemen, my Lord, I'll return to what I say about Ms Letby's evidence after lunchtime.

MR JUSTICE GOSS: Yes, certainly.

All right, members of the jury, we'll have a break now. Could you be ready, please, to come back into court at 2.20? I'll give you and give everyone just over the hour. Please remember your responsibilities to which you've been subject from the very beginning of this trial: no research about anyone or anything to do with this case and no communication with anyone by any means about anyone or anything to do with this case.

Thank you very much.

(1.13 pm)

(The Short Adjournment)

(2.20 pm)

MR MYERS: Lucy Letby, ladies and gentlemen. The convictions, an obvious feature of this case, and we recognise, bound to recognise the extent to which they are capable of being relevant and what they are going to show is a matter for you. We know that. I'm not saying just ignore them; you can't, can you? They are there.

It is a matter for you, in accordance with his Lordship's directions, we ask you to follow that closely when you weigh up what, if anything, they assist with in this case, but to state the equally obvious, they arise from different cases, different from this one and they don't make her guilty of this allegation.

It's really important not to lose sight of that; they don't make her guilty. You do have to be careful to look at the facts properly as we know you will do and fairly and, in effect, not use those convictions as a shortcut to guilt. That's the trail that's laid, isn't it? It's a matter for you how relevant they are, but they are not a shortcut to guilt. That's why, ladies and gentlemen, recognising you will keep them in mind in following his Lordship's direction we suggest you look at the evidence separately from them, at least to start with. Because if that evidence is weak, and we say it certainly is, we say to you please don't use those convictions to beef up what is fundamentally a weak case. That's the point.

We submit if you look at the directions and follow them, that's where they will take you. Now, let me ask you this: whatever you

make of Lucy Letby's case, whatever you make of it, you understand what she says in her defence, if I can respectfully hazard that guess, you understand that, I'm going to suggest. We, the defence are confident that you appreciate what she says is that she does not remember this, but she does not agree she tried to hurt [Baby K]. It's not a difficult concept. That's what she says.

She also says that she does not accept that Dr Jayaram is credible, either with regard to that grievance procedure or generally; that was the point of the word "generally" in her defence statement. It's not difficult, is it? We have had literally hours of what the defence would say are forensic games, word games, about whether saying you don't remember means you are admitting it. Of course it doesn't.

And we are respectfully confident that you can look at what Lucy Letby has said, you can look at her interview and you can work out what she's saying.

Whether you accept that or not is a matter entirely for you, but there's though mystery, is there? She is saying: I don't remember it, but she's not saying: I accept it happened. You may want to bear in mind as you know now that in addition to those seven or eight paragraphs of the defence statement the prosecution took you to, that document contained over 200 paragraphs covering 22 different allegations. I mean, that's a dreadful prospect when you think what that all means, we recognise that. But just on this point, that's a massive amount.

As she said in her evidence, and it's not disputed, there are plenty of those allegations where she gave details and as it happens was convicted. So the prosecution is saying to you that when she says she doesn't remember she's doing that to hide behind it, well that's not actually consistent with her. Plenty of detail was given in that, as she was asked about in her evidence and as she said.

She's obviously not accepting the account as given by Dr Jayaram, and she's not accepting it's credible and she said that in her defence statement. And it's equally obvious, isn't it, that her case is that she doesn't remember what happened, but she does not accept she was trying to harm [Baby K]?

That's the same when we come to the police interviews. A lot of time has been spent going over them. All we ask is you look at them in a fair and balanced way and when you do that, perhaps keep these figures in mind. They come from agreed fact 25 which sets out all those interviews that Lucy Letby underwent.

In 2018 between 3 and 5 July there were 13 interviews that ran for 9 hours and 26 minutes in total, dealing with a whole load of issues, not the [Baby K] case alone but a lot of other material, as you well know.

9 hours 26 minutes. In 2019 between 10 and 12 June there were 14 interviews, which ran for 9 hours and 12 minutes. That's the one in which that interview number 2 falls, in the middle of all of that lot, and in 2020, in November, there were three interviews running for a total of 32 minutes. Shorter.

But that's a total of more than about 30 hours of interview. Sorry, I apologise, about 20 hours of interview. 20 hours of interviews. What you've looked at in this case is barely half an hour. I'm not making excuses, because I'm sure you understand the point we make, which is there was a tonne of stuff she was dealing with, all of it pretty awful. So this isn't an excuse for that. But you appreciate the point, ladies and gentlemen. Start saying on one of them, she says: I don't remember this or: okay, well, if he says that, it must be the other. It's not the only thing she was looking at; there was a massive amount of material.

Then when you go back and look at those interviews -- and please do look at them as closely as you like, we don't ask you to disregard them -- just look how many times she says she doesn't remember, in one way or another. And the police, as I assume you expect they would do, just keep on asking questions and asking them as if what Ravi Jayaram said is an established fact when it isn't, including about morphine and paralysis which isn't supported in the evidence.

Then when she's got notes, she makes reference to it being a nurse from another shift. And it's no good the prosecution asking Ms Letby now what notes she was given. How on earth is she meant to remember that?

In fact, they were conducting interviews. It's for them to show you what she was given if they are saying it isn't what she tells you. And we say they could have, and would have done so, if it assisted them.

Nothing has been given to you.

So look at the interviews, particularly interview 2 and the way that when she says: I don't remember is serially ignored and what Dr Jayaram said is put as if it's fact and then you will see -- and judge what I say by the evidence, ladies and gentlemen -- she begins to answer questions on the basis of what's been put to her rather than anything she is actually remembering.

That isn't admitting being there, it isn't admitting she did one thing or another to [Baby K]. When she's being asked about [Baby K] desaturating, she says: possibly waiting to see if she self-corrected in interview 2, page 8. We spent a lot of time on that comment. It's not saying that what's happened. She is trying to answer something that's been put to her when the police are repeatedly saying: this is what what's happened after she has repeatedly said: I do not remember.

Now, whatever else she's been convicted of, if she's not guilty of this, what more is she able to do? It is this one that we're dealing with in this trial. That's why it's so important to look at this on the merits of what it is and not have it obscured by the effect of those previous convictions.

We invite to you look at those interviews closely and consider is she really conceding anything and she's not. What about the Facebook, the other element of the case relating to her, in particular, that the prosecution have focused on? In itself, searching for the name "[Surname of Baby K]" doesn't make her guilty. You're bound to ask why. We actually had a suggestion, I'm going to come to it, it didn't come from the defendant, it came from the prosecution. I'll get there in a moment. What Ms Letby says is that she searched for all sorts of people, including parents of other children, unrelated to the convictions and that doesn't seem to be disputed.

The prosecution rely upon that search in the context of other searches for parents of babies she was convicted of harming. Now, criticism this morning, again, for how we haven't engaged in an analysis of the pattern of the Facebook searches. Remember you were told about that before lunchtime. Well, we have looked at them in the evidence and I'm now going to say what we say about the pattern.

The prosecution rely upon a pattern, don't they, as to what those Facebook searches show? We've looked through it and you can see it. It's that Lucy Letby, having committed an offence, then goes on to search for someone in relation to it on Facebook. But you see the pattern falls down with [Baby K]. She's not part of the pattern, because the prosecution were keen to show you how the searches fall relatively closely in time to the incident. If you look through it, you'll see. You see the point they've been through it, pointing out: that's so many hours later, that's a couple of days later, or weeks, or a couple of months or something.

What we have with [Baby K] is a search almost at random, on its own more than 2 years later. And it really does beg the question: why on earth did she do that? Not least because given

that, according to Ms Letby -- and there's no reason to doubt this -- that they were aware of death of [Baby K] at the Countess of Chester within days of her going to Arrowe Park. Well, then that is the time which she would be searching in if the pattern the prosecution rely upon applies.

We have got there, members of the jury, when I again, speak to you at the right time on behalf of the defence at the conclusion of the case. It doesn't fit any pattern at all.

The prosecution theory is correct. If you want to test it, you know where you'd expect to find a search for the name "[Surname of Baby K]" and it doesn't fit there, we say, because it isn't part of that pattern. I said to you there is a possible explanation for what happened and in fact, it comes from the prosecution. It may very well be that it wasn't intended to be helpful, but it is in this regard. When they were questioning [Baby K] (sic) about why she'd searched for this, the prosecution asked her -- do you remember this -- if news that the police were investigating had filtered back to Lucy Letby in April 2018 via Joanne Williams maybe, who had been interviewed by the police on 27 March.

The search for [Baby K] is in April 2018. The prosecution were commenting on the coincidence between Joanne Williams having been spoken to about this in March 2018: and is that a reason why the name "[Surname of Baby K]" came up because that's filtered back to you and then you went and had a look, in effect?

Now Ms Letby, consistent, says she can't remember.

But if that prosecution suggestion is correct, that she had looked up the name [Surname of Baby K] because she'd heard that was forming part of the police investigation, and that suggestion came from the prosecution, that is a coincidence and one that's rather more explicable because it provides an explanation for this search that doesn't fit otherwise into the pattern of guilty searches and has nothing to do with guilt.

Ms Letby says she doesn't recall. We know that, but the two key points are the pattern the prosecution rely upon for guilt does not apply to [Baby K] at all.

But the suggestion they made, in fact, for whatever reason, was: were you doing it because word had got back to you during the investigation? You have to judge the case on the evidence. Ms Letby says: well, I don't remember. Perhaps the key thing is it doesn't fit any pattern of guilt and that's what really matters. You need to be sure and we're a long way from that.

I'm going to turn now, ladies and gentlemen, to the prosecution evidence. That's important, isn't it?

Because the prosecution bring this case and they have to prove it so you are sure. Ms Letby doesn't have to prove anything, no defendant does; they don't have to answer questions to the police, they don't have to give evidence, but she has done. You may remember, there were three issues I mentioned when introducing the case to you that we suggested would be helpful to look at when we went along.

The first was the clinical fragile position of [Baby K], I suggested that was the starting point. The second was problems with intubation and the third was the evidence of Ravi Jayaram, something on which, certainly at the start of this case, the prosecution agreed was fundamental. We can apply now the evidence to these and see where they take us and that's all I ask you to do.

So the first of those, the clinical condition of [Baby K], we say clinically fragile position. We'll look at a little of the detail. Not all of it but what it comes down to, ladies and gentlemen, we suggest is that [Baby K] was a very unwell baby and a very fragile baby right from the start. She was. And she wasn't in the appropriate unit for her. She wasn't.

That, we say, is a fact. However that came to happen, that's a fact and that's the point. She wasn't in the right place, the optimal place for her.

We say she didn't get the expert care she needed, regardless of the allegations against Ms Letby, but that what happened with the desaturations is consistent with her condition and the care she got or didn't, and that blame is then shunted Lucy Letby's way, which has the effect of obscuring all of that.

Now, we break that down. [Baby K], a very unwell baby and very fragile. What do you think?

You have listened to the evidence. What do you think based on all the evidence? You can compare the evidence of Dr James Smith with Dr Babarao. You'll remember the two of them.

We say if do you that, that will help illustrate to you, not only what was wrong with [Baby K] and how much, but what is wrong with the attitude of at least some of the doctors, two we're dealing with here, at the Countess of Chester, and with this prosecution case.

Dr Babarao is a consultant neonatologist and he is an expert in the care of babies like [Baby K]. Dr Smith was not and Dr Jayaram was not.

Dr Babarao, if you recall, recognised how sick [Baby K] was by the time she went to Arrowe Park and in light of her condition. And James Smith, and you saw him, he did not and he would not, and it seems he still cannot, accept how poorly she was.

Now, you saw his evidence and how he answered the questions. However he sought to justify it, he did, we suggest to you, all he could to make it sound as if [Baby K] was doing really well. That was his evidence. How happy he was, that's the sort of word he used, how settled, how good she was for a baby of 20 weeks' gestation. And he would concede: well, it's relative to 25 weeks' gestation, but all the time, how good she was, how stable she was.

We'll come to this, there's nothing stable about a baby like [Baby K]. Nothing. As the prosecution reminded us, she's very close to what is, perhaps very clinically but accurately, described as the margins of viability. I'm not being insensitive, I understand the dynamic in this courtroom and how emotive all of this is, but actually, you do have to make as clinical a decision as you can in this case and she was an incredibly fragile and unwell baby. And Dr Babarao is the expert at this level of care, not James Smith.

We can use his evidence as a reference point. So I am going to remind you how poorly because when we get to the area of whether she was in the right place and how fragile she was and how easy it would be for her to become unwell, that is, as I said to you three or four weeks ago, the starting point. It might not be the finishing point, but logically, clinically, it's the starting point.

She was extremely preterm, 25 weeks, with all the problems that go with that. She was 692 grams, described today by the prosecution as the size of a bag of sugar. Keep that in mind, if you look at those videos that have been prepared for you, with the mannequins that are the size of a toddler. I don't know if you will see, they're enormous. They are huge.

We are dealing with a baby that's very small and tubes that are very, very fine. When you remember that, you'll realise, when we get to it, it doesn't make much, in terms of their movement, for any disruption for something to be loose or to move or change position.

We're not dealing, in fact, with somebody the size of the mannequin on those videos. They're just there to show you the system. Do keep that in mind.

She had pulmonary interstitial emphysema, that is a severe lung disease, trapping air in the tissue spaces, on top of having the extremely premature lungs of an extremely preterm baby. She had low blood pressure that was difficult to manage, irrespective of the Countess of Chester. That was what they found at Arrowe Park. This baby that was doing really well, James Smith could tell you none of this. In fact, when the pressure was on, he began to just say all the time: well, you need to ask an expert. Do you remember when I was asking him about the ventilation?

He's the one that was meant to be looking after her.

He didn't even know what his own equipment meant, it seems. She struggled to saturate and she couldn't maintain high oxygen levels; and that went for Arrowe Park as well as the Countess of Chester, we had the statements read of the doctors treating her there.

That's not the fault of Ms Letby. She had a low platelet count. That's a feature in the blood, the platelets are responsible for clotting. So there were blood clotting problems. She had blood sugar problems.

She had kidney problems. When you put all that together, you may see why we were fairly critical of Dr Smith when he presented the Apgar score of 9, as if there was nothing really to be worried about once she'd been stabilised and settled on intubation, it had settled. And we submit that's a million miles away from the picture here.

Dr Babarao said the outcome would have been better off, and [Baby K] would have been better off, at a tertiary. That's not a distraction, that's a clinical fact coming from the prosecution's own witness. Why would the outcome be better? Well, Dr Gibbs, the prosecution witness you heard from at the beginning, gave a very clear description of the different levels of unit and the reasons for having them. Crucially, ladies and gentlemen, a level 3 unit, like Arrowe Park, will have doctors and nurses who have the level of experience required to care for these extremely premature neonates.

Me saying that now is not a distraction; that is evidence from the prosecution's own witness. I have given an example a few moments ago. You see the difference because Dr Babarao knows what the readings on the ventilator mean and Dr Smith doesn't.

Which one of the two of them was in charge of [Baby K], clinically, as a doctor at the time we're dealing with? Nurse Williams, she was this charge of [Baby K] because she was a band 6 nurse, but it has to be said, and she frankly told his Lordship when he asked her how much experience she had of 25-week babies at the time: not very much. When, at the beginning, I said about how you apply common sense and bring your understanding of the real world in here, and in accordance with his Lordship's directions, you don't have to be a neonatologist or experienced clinician to appreciate that if someone does not have very much experience of looking after a baby in [Baby K]'s conditions, that isn't good.

That's not a criticism of Nurse Williams, but how was she meant to know what's stable and what isn't? You may recall Yvonne Griffiths who was a deputy ward manager, gave evidence early on, who agreed with questions from us, that [Baby K] was a high-risk baby. We couldn't get that out of Dr Smith, but you can compare the way different witnesses answer questions in this case. You can compare the way Dr Smith and Dr Jayaram answered questions with the way, for example, that Nurse Williams and Dr Babarao answered questions, and who appeared to be giving just straight answers designed to answer the question and who had an agenda.

Yvonne Griffiths agreed that [Baby K] was a high-risk baby: almost continual observations are required because she's so fragile, she needs to be monitored closely and she agreed that means a baby like [Baby K] can deteriorate -- and this is important, isn't it -- that that can be rapid and that includes desaturations which, according to Yvonne Griffiths, can go from the mid to high 90s to the low 80s within seconds. Seconds.

Now, once -- or after [Baby K] had gone to Arrowe Park, and after her death, there was a review there, and of course the defence identify that for you in the evidence of Dr Babarao, who explains that death was not avoidable or preventable by the time she came to Arrowe Park. But that review concluded it was potentially preventable if there had been in utero transfer, better stabilisation after birth, and that had been combined with good transportation and care at Arrowe Park. And for those reasons, they concluded it was grade 2, sub-optimal care. The first thing is grade 2, sub-optimal care, is not a fantasy conjured by the defence. That was in evidence as a conclusion, or part of the conclusion, by the review panel at the tertiary unit, Arrowe Park.

It turned out, on further questioning -- the prosecution referred to this, this morning -- that that review and that opinion was reached without all the clinical notes from the Countess of Chester. In other words, without knowing about the three desaturations we're dealing with in this case.

Actually, that doesn't assist the prosecution in this regard at all because, first of all, those three desaturations are in issue, they're the things we're looking at. That's what this trial is all about, particularly that event at 03.45. But if the review had concluded this was sub-optimal care, even without knowledge of those desaturations, that's even worse, isn't it, just as a starting point? Even worse. Even without knowing about the desaturations, from what they did know they found this was grade 2 sub-optimal care.

And when you look at the evidence, the reasons for that, we submit, are clear, and it starts with the failure to go to a tertiary unit.

Now, whatever the reason perhaps doesn't matter.

The point is [Baby K] was not in the right place. Stop worry about who's trying to make a point one way or another here, but she simply wasn't, clinically. And yes, we did point out that they got that judgment wrong by 36 hours. We're talking Preston, not Aberdeen. It's up the road. Anyway, Dr Brigham had her explanation about the risks ready to go, as well she might.

But the fact remains that [Baby K] was in a clinically sub-optimal environment to start with and then, and I'll give you the evidence, ladies and gentlemen, before we come to problems with intubation, we have this, don't we: three attempts to intubate and then Doctors Jayaram and Smith settled for a size of ETT that was not optimal and it wasn't. They started with a 2.5. These may sound tiny, tiny measurements, but this is a tiny baby, as you know, and there is a reason they use the tubes they do. 2.5 was optimal, they settled for 2. Why didn't Dr Jayaram take over, actually? Why not?

Anyway, surfactant was given too late, on any calculation. I don't know how you feel about that, I don't know what your knowledge was of surfactant before this case. You have a lot more now if you didn't have it beforehand.

You have to have it. A baby has to have plasticity in the lungs for them to work properly. Got to have it.

Minutes delay in receiving it is bad. There's a delay here of anything from 13 to 30 minutes. If you decide, ladies and gentlemen, that's irrelevant to [Baby K]'s condition and why she might have been prone to desaturating going forwards then me repeating the figures won't change it. I know that because it's for you, but you can look at it, 13 to 30 minutes. And Dr Babarao said: surfactant should be given within 10 minutes and in fact, you may recall what I said to him: when would you give

it? He said: as soon as the tube was in. As soon as the tube was in.

That's a crucial chemical, a crucial medicine for the baby. Anyway, [Baby K] didn't get that. Dr Smith reckons that's fine. Yes? Dr Jayaram doesn't seem unduly concerned by it. Dr Babarao, the expert clinician, neonatologist, it would concern him, we suggest. He'd do it as soon as it was in.

Dr Babarao added the delay of getting in IV fluids, delay in antibiotics, delay in putting in the umbilical venous catheter. The prosecution took you through to transport notes. It's delayed by hours. Hours before that went in. Very high air leak. I'm coming to that shortly. Very high. 94%. No apparent response to that, not even in the doctor's notes. A large amount of bloodstained oral secretions don't even feature in the doctor's notes, not even a record of whether the ETT was checked, whether it was blocked. And [Baby K] not even securely ventilated when the transport team collected her at 9.15.

I'll come back to that and the relevant tile shortly. That has nothing to do with Lucy Letby.

Nowhere that and they still couldn't get it right then.

No problems once Arrowe Park took over. But that's the point, isn't it? That is the point. And that timing with an insecure ETT at 9.15 is important, isn't it, because that's something you can judge this against because that can't be blamed on Lucy Letby?

So let's look at the problems with intubation, ladies and gentlemen, before we come to the central piece of evidence, by the prosecution's reckoning, Ravi Jayaram, by their reckoning at the start of the trial.

[Baby K] desaturated three times that we're looking at, around 03.45, some time around 06.25 and then event 3, 07.25. I've spent some time talking about her condition because I suggest to you, desaturations like this are not surprising for her condition and the level of care.

The low oxygen saturation and low blood pressure continued at Arrowe Park, along with many other problems. They just continued. But Ms Letby is being blamed on this occasion for the desaturations at the Countess of Chester on the basis that she dislodged the ETT each time. Can I ask you, please, ladies and gentlemen, as we're dealing with the nature of this prosecution case as it is, keep in mind that's the allegation that we started with. We have to measure where we get to by whether they've made you sure of that. Three times.

We have to look at all of that and see whether it makes us sure that 03.45 was due to Lucy Letby interfering with that tube. Now, the prosecution case in opening this to you was that those events 2 and 3 -- and I'm going to deal with them first before event 1 -- those events 2 and 3 were due to Lucy Letby interfering with the ETT and that supports what they say on count 1.

We say they need that, they need to try to show you that, because they've got to come up with that suggestion that, having been caught red-handed, Lucy Letby was trying to make it look like [Baby K] was constantly extubating and desaturating. But knowing the problems with count 1, event 1, knowing how problematic that is, they are desperate to find support elsewhere to beef that up. So they've turned to those two other events.

With some subtlety they say: well, on those two occasions, events 2 and 3, [Baby K] was being interfered with because Lucy Letby wanted to make it look like she was desaturating so there was no suspicion about her having been caught red-handed, or nearly red-handed. That is daft, isn't it? That is utterly daft, because let's say she had nearly been caught like that. The last thing she's going to do is try the same thing twice more, with people knowing that's what she was nearly caught doing. And actually, let's get right down to it, if she'd nearly been caught like that, the last thing Ravi Jayaram is going to do is leave her in there to do that. Seriously? After having suspected she was trying to kill babies for how many months? And then catches her red-handed? He even wanders off at one point and comes back at 04.39 or something like that.

Staggering.

He even allows her to give morphine, in that knowledge, supposedly. It makes -- it's unbelievable that she would have been left in that position, but this is the prosecution's theory and we say they are trying to work in events that have nothing to do with Ms Letby in a contrived attempt to get support for that allegation. Those are my submissions about it. You look at the evidence, ladies and gentlemen. You don't have to accept what I say. Turning to the evidence, event 2, all right. This is the one around about 06.25 with the X-ray.

The basis, at the start of this case, for saying that Ms Letby was responsible for that was that, as with the other events, she had dislodged the ETT. You know that. But there's no evidence it's moved at all. The evidence doesn't show that at all. Dr Smith put the tube in at 6.5 centimetres, if you remember. It's all in the notes. It's continuous. It's X-rayed, it's in the

right place, there's a desaturation around 06.25 and then Dr Smith pulled it back, from where he'd put it, to 6 centimetres. That's it. That's the evidence.

Nothing about it having moved anywhere.

His evidence, Dr Smith, was that he pulled it back from where he'd put it and that's the evidence on event 2. That's before we even consider the fact that if you look at the timings, [Baby K] would have had people all round her over this period, from the radiographer, the doctors reviewing the X-rays -- there's no space to do anything, actually. But it's continuous when you go through the notes. How little it takes, ladies and gentlemen, for an allegation to be made in this case.

The evidence is that the tube was where Dr Smith had put it and he pulled it back from 6.5 to 6, and that is it. And there is not a jot of evidence that Lucy Letby did anything at all, apart from being nearby, and that is the reason the prosecution work on the basis they can put that on her. But there's no evidence. If an allegation was meant to be based on interfering with the tube being moved, the only person to move it was Dr Smith from where he put it.

Event 3. Again, we submit, utterly unrealistic that there would be a third shot at this in the same morning, as the prosecution claim. Handover is one of the busiest times on the unit; this happens at handover.

There are, in fact, about double the number of nurses on the unit at that time than there would be with when the shift is flowing. You will remember, there are two other babies in that nursery. We've heard nothing about them over this period.

At this moment, we don't know who's in that nursery and who isn't in that nursery. There is no suggestion that Lucy Letby was alone in the nursery. There's another two babies there, at handover. We know, at some point, nurses gather at the cot-side to get a handover from the nurse who's been there looking after the baby.

In fact, the only evidence we have is of the call for help. And it turns out a tube has slipped, and on that basis, this is her fault.

That is her fault. Now, we know tubes can slip if not secured properly. The prosecution rely on the fact that [Baby K] was not reintubated again after she went to Arrowe Park, after Dr Kamalanathan took over. But we know, and I mentioned this, the tube wasn't properly secured at the Countess of Chester even

when [Baby K] had been sedated and Lucy Letby was nowhere near and I'm going to ask Mr Murphy to put up tile 202, please.

Scroll down a little bit. Thank you.

Four lines from what we can see down here, ladies and gentlemen, it says:

"Baby is ventilated. Not very secure. Ties tightened with effect."

Can you see that?

"Baby is ventilated."

The cursor is next to the word "baby":

"Not very secure. Ties tightened with effect."

Now, Lucy Letby has gone at this point, this is nothing to do with her. We know that [Baby K]'s been in the care of Nurse Taylor and [Nurse B] and it isn't properly secured and it has to be fixed correctly.

So we'll turn to event 1. There's event 2: nothing about a tube being dislodged when we got to the evidence. Event 3, nothing to suggest Ms Letby is alone putting in anything she shouldn't do. We know the tube can move. We've got it here. We can take that down, Mr Murphy.

Event 1. There's no disputing there was a desaturation around 03.45. Dr Smith told us about DOPE, remember DOPE? Displacement, obstruction, pneumothorax, equipment failure. They are the possible explanations. The allegation is deliberate displacement and we're going to come to that. What about the others?

There's no pneumothorax, it's not a punctured lung, that's what a pneumothorax comes down to really, air in the lung area.

Obstruction. Obstruction. Well, if the prosecution are going to tell you, or present a case on the basis that you can be sure Ms Letby is guilty of this, you need to be able to exclude other possibilities, don't you, on the evidence?

We suggest to you the question of obstruction was not properly considered at the time. It wasn't.

You have seen the nursing note at tile 132 where there's reference to a large amount of bloodstained oral secretions. At one point, with either her or Dr Smith, I've referred to it being blockage. That's my error.

That might be obvious. What I'm getting at is that large amount of bloodstained oral secretions.

In the nursing notes. Not even a reference to that in the doctor's notes. Nurse Williams told the prosecution she wrote that because that is what she saw.

So she saw this and nothing in the clinical notes. You may think that is astonishing and the doctors, remember, are using what's called a laryngoscope, which means you can look in and see what's happening.

How James Smith didn't see a large amount of bloodstained oral secretions at any point is extraordinary, and does not reflect well on how [Baby K] was being dealt with, unless we're going to start making excuses and applying completely different standards to what we expect of the defendant and the prosecution witnesses in this case. But how could he have missed that? No one is suggesting that Nurse Williams has got that wrong.

So one thing lead to another, doesn't it? Neither doctor sees this, neither records it. And a blockage, or rather bloodstained secretions, we say capable of causing a blockage, that would explain the desaturation.

We say it's doubtful the tube was checked. Ravi Jayaram in evidence, ladies and gentlemen, said to you -- he said: I had a glance, there wasn't a massive plug of mucus. Which rather begs the question: how massive does have it to be in a 2-millimetre tube? Not very.

2 millimetres. But in 2021, he told the police he hadn't checked the tube.

Well, he hadn't checked it. We don't know there wasn't a blockage, period. And there's enough secretions there for there to be one, we say. So, in 2021 he told the police he hadn't checked it and the prosecution asked him about what he said in 2018. And he said, in that interview, that a smaller tube is more likely to get blocked, but this tube wasn't because when you take it out you actually see if there's a plug of mucus in it. Well, he didn't actually say what he did or didn't see.

Trying to pull that together, we have a suggestion it was not blocked in 2018, an admission that he didn't check it in 2021 and an assertion a couple of weeks ago that having taken a glance, there was not a massive plug, and nothing in his notes and no reference to a large amount of bloodstained oral secretions that definitely were there.

You may think that is very poor, whatever else you find in this. We -- the defence are not under a burden to prove anything, although it may sometimes look like it or feel like it. But as it happens, we would say you certainly can't discount blockage in this situation and you can't rely on what Dr Jayaram says about it unless it's all right to give three different versions, and you ignore the one that says he didn't check it. He's actually said that to the police at one point: I didn't check it.

What about equipment, thinking about DOPE? The intensive care equipment, we know, has that leak at 94.

There was a bit of a debate with James Smith about what 94 meant. He kept on saying it's not a percentage.

It is a percentage; we've been over this with Dr Babarao. It is not good. It's obviously very high.

When you look across that chart, you see, when the ETT has been changed to a slightly bigger one, the leak drops to 5%. That's not a coincidence. That makes absolutely sense of what we know. According to Dr Babarao, 94% is very high and the tidal volume reading is too low and that would be a concern depending on the clinical condition of the baby.

That must be right, mustn't it? It could just be something that doesn't matter very much, but it depends on the clinical conditions of the baby. He would want to investigate that. He would check that. That's what the expert neonatologist would do. There is no evidence, certainly no recorded evidence, from Dr Smith or Dr Jayaram that they did that. Dr Smith doesn't even understand what the readings mean, if his evidence is taken the way he described it. He kept saying to me: you'll have to ask an expert. So I did and we got the answer: it's a big leak and should be checked.

Dr Babarao talked about possible causes. He said you could get a leak like that because the ETT has been dislodged by the baby or someone else. You could have it because of a system malfunction. It could be the ETT isn't positioned properly. It could be it's too narrow.

Which takes me back to that point, ladies and gentlemen, about the fact that the leak goes away when the 2-millimetre is replaced by a 2.5 millimetre, which is what it should have been in the first place. Dr Jayaram and Dr Smith and the prosecution point to the high oxygen saturation at the same time as the leak and say: well look, there's nothing wrong with [Baby K]. Yes?

But Dr Babarao agreed it is possible for oxygen saturation to remain high because [Baby K] is doing the work, or a baby is doing the work, to breathe herself.

The ventilator isn't getting what's needed, the oxygen may be drawn in by the baby breathing. He said that was a theoretical possibility. But however we approach this, we say it's not right just to work on the basis that the oxygen saturation is fine so all is okay.

Things can go wrong with a little baby like this and it can go wrong very quickly. The bottom line is it should have been checked. It wasn't. It wasn't. Or at least, it certainly doesn't appear that it was. Then when the ETT is changed to the larger one, the leak goes, which we say rather proves one of the points we are making.

So equipment, blockage.

What about [Baby K] dislodging the tube? We know the allegation is Ms Letby dislodged it, but we're looking at the alternatives. We have to be sure, if this is going to be fair. What about [Baby K] dislodging the tube herself? Again, the doctors' notes make no reference to dislodgement. Ladies and gentlemen, that has to be amazing, doesn't it, given what Dr Jayaram says? I'm going to get back to Dr Jayaram in a little bit, but that's extraordinary, isn't it? If things happened the way he said, how could he not at least put "Tube dislodged" on the clinical notes, but it doesn't appear there. There is reference to dislodgement elsewhere, but we will come to that.

Well, of course, one theory is Lucy Letby dislodged it. That's one we're looking at closely here. But there's others to look at because we say there's no reasonable doubt, in fact, that a baby in [Baby K]'s position is capable of doing that herself.

You've had the evidence of Caroline Oakley read to you, who said: I know of incidents in the past where a tube has slipped. As the prosecution have been keen to point out, that's agreed evidence. Agreed evidence.

She knows there's incidents in the past where a tube has slipped. You've had read to you, the statement of the nursing expert Elizabeth Morgan talking specifically about the [Baby K] case. So she knows what she's talking about, she knows her comments are by reference to [Baby K] and she said this, agreed evidence:

"In my professional experience it is possible for an endotracheal tube to become dislodged in an unsedated or active baby, or where securing ties have become loose. Where a baby is

sedated or paralysed, this is less likely to occur accidentally."

Well, that must follow, but not impossible. But that's important, isn't it, from the agreed evidence of this expert, that the tube can become dislodged in an unsedated or active baby, if [Baby K] had been active, or where securing ties have become loose? And you'll remember, this had to be tied by transport team at 09.15 because it wasn't secure.

Ladies and gentlemen, I'm grateful. I know it's difficult, because we're getting to 3 o'clock in the afternoon, to focus on the intense detail, but we ask you to judge this by the detail of the evidence, which is why I'm taking a little time to go to it after allegations of distraction and nonsense and red herrings. We ask you to judge this, not by advocacy, but by the evidence and that's why I'm going through it like this.

MR JUSTICE GOSS: Mr Myers, if you want to have a break now, have a break. I'm entirely in your hands. We will have a break at some stage this afternoon. It's only a question of whether it's the final break for the day, or whether there will be --

MR MYERS: I have about 23 or 24 minutes left. So I'm quite content to continue and we can take a break at 3.30, if the members of the jury are comfortable.

MR JUSTICE GOSS: Would you like a break at 3.30? Then we'll do about 20 minutes or so after that.

MR MYERS: All right. Thank you.

I realise having said that, if I go slightly beyond 3.30 ...

MR JUSTICE GOSS: Well, you're not held to that exact time.

MR MYERS: I've got my eye on time. It'll be about half an hour. 20 minutes, half an hour, ladies and gentlemen. It won't be longer than that. I'm grateful, my Lord, and I'm grateful for the attention. I just recognise it's hard listening. Advocates do a lot of talking. We tend not to get it the same way, but it is important to have the detail, we submit.

On the subject of the tubes dislodging, just going through evidence which shows this is not such an extraordinary situation. Baby KC self-extubated the night before. We have got it in the neonatal review, and Baby KC is in the intensive care unit.

Self-extubated.

Joanne Williams agreed an active baby can dislodge a tube, despite her limited experience of 25-week old babies and Ravi Jayaram, even in his statement on ITV News, said that tubes become dislodged. Although he also said: this was a 25-week baby who wasn't kicking around or vigorous. You can look at the notes.

Joanne Williams described [Baby K] as being active early on at least. He also suggested to the police, in his initial statement, that [Baby K] couldn't have moved because she'd been on morphine. That doesn't really appear to be the case, we suggest, on a fair and balanced view of all the evidence and that's one of the reasons it may be important to look at that because we submit Ravi Jayaram has said things to bolster his credibility, for whatever reason.

So where do we get to before we enter the world of Dr Jayaram? We have [Baby K], very unwell and clinically fragile and prone to desaturate. As she did throughout her tragically short life, including at Arrowe Park. Prone to desaturate. And we have a desaturation at 03.45 that we're looking at.

Could it be because of a blockage? We submit on the evidence, actually it could be, it just could be.

There's no sensible serious check done about that.

Could it be because of a problem with the air leak and the ETT size? Well, it could be. It is right that she was saturating well, but there's no evidence that the doctors really responded to this leak and we know that her condition improved when it changed to a 2.5 ETT. It could be, we say.

Could it be dislodged by [Baby K], herself? Actually, on the evidence, yes of course it could. Of course it could.

Do Lucy Letby's previous convictions make any difference to that, up to that point? No, they don't.

They don't make any difference to whether or not there was a blockage and did the doctors check. They don't make any difference to whether there's a problem with the air. There obviously was a big air leak. They don't make any difference to whether [Baby K] could have dislodged the tube herself. They are tiny tubes; it takes very little, we submit, with movement. So you may agree, actually, that the reason we're here is in large part because of what Ravi Jayaram said to the police more than a year after the event. That's why we're here.

I remind you, you may well remember, in opening the prosecution were ready to recognise this at that point, weren't they?

Ultimately, this case may come down to a single issue: do you believe what Dr Jayaram says he saw? Are you sure, will you be sure, that he, when he gives you his account, is telling you the truth about what he saw? And that is why we're here. Although the convictions are powerful, aren't they, emotively? And potentially, for to you decide, in any other way. But actually, when we strip it down to the basics of the events that night, it's what Ravi Jayaram says that brings us here.

He has given a lurid description, hasn't he, of what he says took place? You've seen the footage from ITV News. I'm not going to play all of that again, although you can have access to that and remind yourselves. It's a powerful description, isn't it?

A powerful description. In fact, are we able to go to it? Because it's perhaps worth going back just to see what an impression it's made on Dr Jayaram and what we were dealing with, and then we can turn to what he did do and what he didn't. Just play it again. It's only about one and a half minutes long.

(Video played to the court)

First line, almost, and the second line -- so the final line from Dr Jayaram, the first line:

"This is a night that is etched on my memory and will be in my nightmares forever, to be honest."

And finally finished with this:

"The only possibility was that that tube had to have been dislodged deliberately."

The only possibility. I should say, when it came to asking Dr Jayaram about that, having agreed with what he said in that clip, a little later on, if you remember, as I questioned him and maybe he began to appreciate what "Deliberately dislodged" meant. He began to say, well, maybe that's something he thought later and he changed that a lot. He wriggled around in his evidence a great deal. If neonates do wriggle as much as Ravi Jayaram wriggled in his evidence, it's no wonder tubes might get dislodged, ladies and gentlemen.

But he says that he already believed she'd been deliberately harming babies and now he'd got her red-handed. The prosecution said that, didn't they, because this was dislodged deliberately? Right. Now, let's get down to what's at the heart of this case, according to the prosecution.

The lead consultant on the unit. Welfare of babies is paramount. What do you do in that situation, really?

And it's very simple, isn't it? You call the police, you get the management involved. You'd get her out of there, there and then, if you thought this had happened.

Think in the real world, ladies and gentlemen, if this happened as he claimed. Pathetic blustering about management: we have difficult systems. Really? You'd do that, would you? With someone killing babies on your unit: oh, I'm a bit worried about the management.

You know what, if there's any truth in what he says about having problems with management, this would have been the moment to go to them and say, "Never mind suspicions or reviews, I've caught her red-handed, or virtually red-handed, deliberately dislodging a breathing tube. It's giving me nightmares that are etched in my mind for eternity".

You'd do that, wouldn't you? You'd say something to somebody. You'd act on it. Nothing. The prosecution questioned him after my questions and it's apparent that between something called a "Thematic review" at the beginning of February 2016, the week before [Baby K], and the [Babies O, P & R] in June 2016 -- they died in June 2016 -- between that period Ravi Jayaram did nothing. Nothing.

How on earth could he not have gone to managers and said what he had seen if -- it's very simple -- if there's any truth in that? Really. Unless we're going to just make excuses and allowances for somebody, in a way that is frankly incredible, you may think. That whole point is that if he saw what he says he saw, that would have been exactly the reason to go to management and say, "I've caught her red-handed; get her out".

Not leave her working on the unit for another four months, if there's any truth in what he says.

Whatever you may make of Ms Letby, and I understand that, and the convictions and all the prejudice and how unpleasant they are, that is unbelievable. There's so many excuses he gave: I didn't call the police because -- he said they wouldn't have talked to him.

Just said that. That's ridiculous. Why would they not talk to him? "Hello, it's Dr Jayaram, I'm the lead consultant at the Countess of Chester Hospital, we've got a nurse here, I've just caught her trying to kill a baby". What are the police going to say? "Sorry, you're wasting police time, mate". Utter rubbish. We didn't put Ravi Jayaram at the centre of this case, the prosecution did. They have had precious little to say about him

at the end of it. And you may think that's not surprising after his evidence.

I asked him: the easiest thing to do, Dr Jayaram, is to say you have a nurse on the unit killing babies. You could have done that, couldn't you? "I could have done that, I could have done that", he said. "Well, what actually stopped you from doing that, what stopped you doing that?" "Adherence to process", he said, "systems".

We say he is just looking for pretty lame excuses now to justify not acting when the reality is he didn't act because, at that time, there was nothing for him to act on. That's the only sensible explanation and it's unbelievable, we say, for a man who, it has to be observed, has so much to say for himself in this courtroom and on TV, unbelievable that he was, in effect, rendered silent for 14 months, if he really believed he'd caught the nurse already suspecting to be harming babies in the act of trying to kill one of them.

"We didn't have any training in how to deal with these situations". We didn't have any training in how to deal with these situations. What training does it take? It is unbelievable -- and unbelievable, we respectfully observe, that you are expected to believe it.

Commented on the fact that at 04.39 we have Dr Jayaram coming back on to the unit to write up his notes. No idea how long he'd been away for. How could he leave Ms Letby on the unit without saying a word to anybody, including her, if he'd really seen what he went on to later claim he had seen? These aren't difficult questions, ladies and gentlemen. They might make us all feel a bit awkward because of where they take us with regard to his credibility.

If he says what he says -- if he saw what he says he saw, we submit of course he'd have escalated this or called the police or done something. What is believable and makes more sense is that he did not see anything that led him to believe that a tube had deliberately been dislodged. And that is why he did nothing and said nothing.

If that's right, or if that's possible, that is an end, we submit, to this allegation. It is as simple as that.

But he's stuck with this dramatic allegation now and he's chosen to try to defend it, however unbelievable it becomes. Well, a lot of that, of course, is comment, by me on his evidence and you've before told about advocates and comment and you have to judge this case on the evidence. But we ask you to reflect on the comment we make and decide whether that is fair in the

circumstances for a doctor in his position and we submit it is unbelievable what he says.

Dr Smith says he came into the nursery after the desaturation around 03.45 and asked: what's happened, what's going on? I asked Dr Jayaram, I asked him: why didn't you see to him, "You're not going to believe it, I've just seen Ms Letby in there, she's just dislodged a tube, it's the only possibility. That's what's happened." His answer: because it wouldn't have been appropriate to say it to him. That's just something he's come up with, we say, in the spur of the moment having been asked the question by me because there is no real answer to that. Of course he'd say to his colleague: we've got a real problem here. You're not going to believe what I've just seen. Or he might say: you will believe what I'm going to see -- what I've seen. We've got a real problem here, we've got to do something. Nothing. It's unbelievable.

The evidence of Joanne Williams. Compare her as a witness with Dr Jayaram. You decide who is the more reliable and believable. She says that when she came back on to unit at 03.47 the alarm, or alarms, were sounding. That's what she wrote in her statement in April 2018, and she stands by that now. We submit that no matter how the prosecution start talking to you about timings and working their way around this now, that does not appear to match what Ravi Jayaram said in his evidence to you about no alarms sounding.

But he is not even being consistent about that, ladies and gentlemen. Do you remember, there's another detail here? We went through his interviews with him.

Because although he told you in evidence that there was no alarm sounding, and that is a significant part of how the prosecution bring this allegation, in his interview with the police in April 2018, he said that he didn't remember if an alarm was sounding or not. Remember that? I went over that with him. That wasn't a slip of the tongue. In that interview, three times that I went to, three different places. Three times he said he did not remember if there'd been an alarm.

Well, what's changed then? Why is he saying now there wasn't one when that isn't what he said in 2018 three times. And in the statement made by Joanne Williams to the police in 2018, which she agreed within her evidence, we have her describing something that doesn't really come close to what Dr Jayaram said.

And this is the thing that the prosecution went to today, with an alternative explanation that's come out of absolutely nowhere. I'll remind you what she said.

I'd asked her about the alarms and said to her: you remember Dr Jayaram being present in or about the area when you returned, don't you? Answer: yes.

So, ladies and gentlemen, she was quite clear what we were talking about. She was when she made her statement in 2018 and nothing was said to her in the course of her evidence by the prosecution to say it was all a big muddle. Nothing. She's talking about the event we're focusing on: yes, he was there. I asked her: he was saying things like, "What's happened, how's this happened?" Her answer: yes. If there's any mystery, I reminded her: you made a statement in April 2018 a lot nearer the time. And she said, "And I remember him asking me that." Nothing about: oh, this might be a later incident. Nothing to support the suggestion floated by the prosecution trying to work their way round what this evidence does to Ravi Jayaram's evidence, which is what's going on there.

"I remember him asking that and I said: what's happened? How's this happened?" And, in fact you said, "I don't know, I wasn't here. I was with the parents", and she agreed: yes. So we know exactly when she's talking about because that's when she went to see the parents. She's just come back from is. And he was also asking you who was in the room at the time the alarms went off. That's something he asked. That's taken from her statement in 2018. She said: "yes".

"So you remember him asking you who was in the room at the time the alarms went off?" "Yes".

There's no doubt what she's talking about. We say it reflected very dimly that there has been an effort this morning, she wasn't even questioned about it by the prosecution, but to kind of say: oh, maybe she's mixing the events up. There's no basis to that. It wasn't said to her. You've got her evidence there. She's talking about the event when she came back from seeing the parents. It couldn't be clearer. She talked about alarms ringing, she talked about Dr Jayaram wanting to know what had happened and who had been there.

Now, you know what that does to his evidence. It's utterly inconsistent with it because according to him, he knows what happened. He'd seen Lucy Letby there having deliberately dislodged a tube. If he's right, there would be no reasons to ask these questions of Joanne Williams, would there? He wouldn't need to ask her. He would just be thinking about what he'd just seen.

But instead, when we get to a witness who isn't Dr Jayaram, her evidence of these events is he was wanting to know what had happened and who'd been there.

And that is her evidence, we submit, clear and neutral witness, utterly inconsistent with Dr Jayaram, fatal to his evidence. That is why this morning you saw the prosecution literally just conjure up an alternative explanation that has nothing to do with the evidence you've received. Because they know how bad that is.

Dr Jayaram did have something to say about the tube and you'll find it in a transport note, ladies and gentlemen, at tile 76, so I wonder if we could go to that. 05.55:

"Call received from Dr Jayaram. Baby dislodged the tube and had to be reintubated."

No dispute. This is about that first event. Baby dislodged the tube and had to be reintubated.

Inevitably, that has led to some wriggling, principally from Dr Jayaram. But we can be confident this is accurate. If we put up tile 75, which he was asked about, at page 73, if we just scroll down. This is the start of the transport log. This is the first few pages of it. If we go down to page 3. And what he was being asked about -- what we see down at the bottom here, the information that's put there, what Dr Jayaram said about that, thank you, Mr Murphy, is:

"Anything on here would have been what I told the team."

So no problem, no problem with the accuracy of this.

No problem up to page 3. This is all part of the same log that we had at tile 76. So just pop back to tile 76. Just the top of tile 76 if you could, please, Mr Murphy.

This morning, there we are, we see the 03.15 entry.

The prosecution were talking about this log for a different purpose, they're talking about this timing.

They said this, this morning:

"A very, very precise note made by the transport team and they don't have a dog in the fight."

Do you actually remember them saying that? They were talking about a different part of it, but when it came to not talking about the tube dislodgement, they were happy to say: a very, very precise note made by the transport team. They don't have a dog in the fight.

Well, let's look what the else is in this precise note then, which contains anything that Dr Jayaram told the team: anything on here would have been what I told the team. Just scroll back to 05.55, please.

No issue as to any other details, which come from Dr Jayaram. They are relied upon. That section is followed by information about the UVC and nobody says that is wrong. So, how inconsistent are we expected to be to assist the prosecution with this? Plainly, you are expected to make an exception for the bit that gives the lie to what Dr Jayaram claimed over a year later.

It is a specific entry, ladies and gentlemen. It gives a record and not only does it do that, but it gives an explanation and you have it there: anything on here would be what I told the team. He told them this. Baby dislodged the tube and had to be reintubated.

It's not a misspelling, it's not getting a detail wrong. That's a kind of narrative explanation that's been given. No one is saying the rest of this is wrong when it comes from Dr Jayaram. It's a positive description, an explanation. And when you then look at that against what we say is unbelievable in this case, and the failure to act, and the explanations that have been paraded before you, this is why, we submit, there's no calls to the police or complaint and why he was able to leave the unit with Ms Letby still working there and why she carried on working there for months without complaint arising out of this.

Now, all of these are matters for you when it comes to looking at the evidence, ladies and gentlemen.

I reiterate, we are grateful for the close attention to the evidence because it matters. In fact, when someone has convictions like this against them, it doesn't matter less, it matters all the more really, that we look closely at where we can get to. We ask, and I know it's a piece of advocacy. It's advocacy when I said this, but we ask: if Lucy Letby wasn't convicted of those other offences, do you really think we'd be right here now, on this evidence? Plainly, we say, no way.

The prosecution are right when they said, several weeks ago, that ultimately this case may come down to a single issue: do you believe what Dr Jayaram says he saw? Are you sure, will you be sure? Sure. That's the test. That he, when he gives you his account, is telling the truth about what he saw. The allegation does stand or fall on the evidence of Dr Jayaram. We don't distance ourselves from all the medical evidence in the case, we ask you to look at it because we say that supports the defence. But ultimately, the allegation stands or falls on the evidence

of Dr Jayaram, whatever Ms Letby has been convicted of elsewhere.

It only stands on that evidence if you can be sure of it. We say, ladies and gentlemen, it is unbelievable, unless you are going to let the impact of those convictions obscure what is fair and what follows from a fair assessment of the evidence in this case.

That is what we say to you. It's not about sympathy, what you're engaged in here. It's obviously not about retribution for other events. Ms Letby has been convicted of those offences, she faces the consequences of that. It's no answer to what has happened already and it doesn't make this better if she's now convicted for something that she hasn't done, or might not have done. We say you have very good reason, very good reason, not to be sure of this allegation and that whatever Lucy Letby has been convicted of elsewhere, the safe verdict, and the proper verdict on this count, is not guilty and that is the verdict we ask you to return.

MR JUSTICE GOSS: Thank you, Mr Myers.

As I indicated, we'll just have a 10-minute break now and then I will begin my summing-up, continue my summing-up, and give you a short period. It won't be very long because you've had a lot -- you've been talked at a lot today. I'm just going to set out, basically, the background tonight and then we'll continue with my summing-up tomorrow morning. All right?

So quarter to, please. 10 minutes. Thank you very much.

(3.35 pm)

(A short break)

(3.45 pm)

SUMMING-UP (continued)

MR JUSTICE GOSS: Members of the jury, you have to decide whether the defendant, Lucy Letby, in the early hours of 17 February 2016 attempted to murder [Baby K], a very premature baby who had been born in the neonatal unit in the Countess of Chester Hospital a very short some time earlier.

The defendant was working in that hospital as a neonatal nurse and has been convicted of murdering seven babies in that unit and attempting to murder six others, making two such attempts on the life of one of the babies, between June 2015 and June 2016.

I have already directed you in relation to the potential relevance of those convictions. As events, they are part of the context of the offence upon which you are trying the defendant. This part of my summing-up will involve reviewing the evidence that has been placed before you, but I repeat and emphasise that it is your view of what is significant and relevant to the decisions that you have to make and your resolution of the conflicts in the evidence you consider you have to make in the context of all the other evidence in the case that is important.

I begin by reminding you of the background and context of the events giving rise to the offence upon which you are trying her.

The Countess of Chester Hospital is, and was in 2016, a general hospital with a maternity unit, within which was the neonatal unit, in which premature and sick babies were cared for at that time and to which I shall refer as "The unit".

Given that we are concerned with the hospital structure and layout of the unit in 2016 and events and practices at that time, I shall use the past tense.

In the Cheshire and Mersey neonatal network, which adopted the prevailing NHS structure in England and Wales, a three-tier system of hospitals was operated.

The tertiary system, with which you are now familiar, is set out in section 1 of the agreed facts in your jury bundle. I shall give you references, a lot of references, during the course of this evidence, I'm not going to ask you to look at any documents in particular.

If I do, they will be few and far between and I will tell you at that point.

The normal duration of a human pregnancy period is, as many of you will know, 40 weeks, although strictly, the definition of a "Term baby" is 37 weeks. An "Extremely premature baby" is one that is under 28 weeks' gestation and viability, that is survivability, is about 22 to 23 weeks' gestation.

The Countess of Chester was a designated level 2 unit at that time and routinely provided care for babies of 27 weeks' gestation and babies that required intensive care for up to 48 hours. A level 3 unit had more cots, more ventilator spaces to manage more ventilated babies because they needed to because that is, and was, their role and provide more specialised treatment and newer treatments and certain times of ventilation for babies who are not making good progress with conventional mechanical ventilation.

That is but the briefest of summaries of what you heard from the witnesses in this case about the difference between a level 2 and a level 3 unit.

At the time, the Liverpool Women's Hospital in the city centre and Arrowe Park Hospital, which is in Upton, Birkenhead, were designated as level 3 tertiary neonatal intensive care units. Under the tertiary system, babies under 27 weeks' gestation should be in a level 3 hospital. On 7 July 2016, after the events with which we are concerned, the neonatal unit at the Countess of Chester was reclassified as a level 1 unit by the health trust, that is agreed fact 13, because of the events that had taken place over the preceding year at that hospital.

Dr Jayaram said that that was the case, a consequence of the events of that year and the consultants' concerns about the defendant Lucy Letby and the deaths of babies.

Dr Gibbs, who retired from working at the Countess of Chester as a paediatric consultant in 2019, explained that as a level 2 unit, it would be ready and equipped to provide intensive care support to a very premature neonate for up to at least 48 hours. Typical intensive care would be full ventilation, so a baby that could not breathe adequately by themselves would need to be attached to a ventilator. Other categories of care needs are some significant respiratory support, but not full mechanical ventilation, plus other problems such as needing intravenous feeding. These, he said, were agreed national levels. The next level down is a high dependency care and the lowest level of care is special care.

The doctors working in a level 3 unit are a special type of paediatrician known as neonatologists and spend all their time caring for newborn babies, whereas in district hospitals, like the Countess of Chester, a level 2 unit, the doctors who look after the babies are general paediatricians, who cover a paediatric ward as well as a neonatal ward.

From a nursing point of view, the staffing ought not to vary in terms of number of nurses, but the nurses in a level 3 unit are much more experienced because they're dealing with the most premature and sickest babies all the time.

In section 2 of the agreed facts on pages 2 to 4, you have details of the unit in the Countess of Chester.

You have a plan, in section 4 of your bundle, of the ground floor layout of the unit and some adjacent areas.

It's a guide, it's not scaled, it's not a wholly accurate depiction of the unit, but it is agreed to be an appropriate plan for the purposes of this trial.

You have photographs and a walk-through recording which is on the sequence of events on your iPads, so you can always look at that again, should you so wish.

Nursery 1 was the intensive care room, you have a plan and photographs in section 5 of your bundle. There were four incubators at the time, a computer and a drugs or medication cabinet in there as well as other equipment.

Room, or nursery, 2 was a high dependency unit and rooms 3 and 4 were special care babies' rooms, or nurseries, in which babies were placed prior to going home. In other words, if you start in 1, you move down to 2, 3, 4, home, so to speak.

The details in relation to the rooms, or nurseries, their purpose and the means of entry and reliability of swipe data are set out in section 2 of the agreed facts.

Put shortly, it is necessary, or was necessary, to have a pass or swipe card in order to get into the neonatal unit in February 2016. From inside the unit, there is a button to press in order to leave. So there is no record of the cardholder or time of anyone leaving the unit. It is only people entering that are recorded on the swipe data. This is relevant to the evidence of Joanne Williams, to which I shall come in due course.

Also in section 2 of the agreed facts are the details relating to the medical staff. You have a sequence of events in the A3 file and on your iPads, behind which are documents summarised on the 302 slides or "tiles", as they have been referred to, fronting them. Also please remember that any event description on the sequence of events relating to entering or leaving the neonatal unit should say the opposite. In other words, if it says the cardholder was leaving, they were, in fact, entering the unit, and where it says "entering" they were leaving. That, again, could have been a source of confusion.

You also have the A3 tagged neonatal review in the (Indicating) A3 file, in which documented events are put in sequence and tabulated to assist in providing you with a cross-referencing document as to the general or specific events or observations, readings, medications being prescribed and administered and the staff involved in the unit.

I shall give you references in relation to some of the documents, but, as I have said, with very few exceptions, I will not ask you to look at documents in my summing-up. You are

familiar with them, you have them and, as I have said, it is for you to decide what's relevant and important in reaching your decisions in this case. It's not for me to tell you what is relevant.

The nurses all worked on a 12-hour shift system from 7.30 in the morning to 8 pm, and from 7.30 pm to 8 am.

There was a half an hour overlap, in other words, during which a handover was given to staff coming on duty by the staff who were going off duty. The timings that we have in the documents are all using the 24-hour clock.

Yvonne Griffiths, the deputy ward manager at the time, explained that at the handover, the oncoming nurses would have a summary of all the babies presently on the unit and then they would be allocated specific babies according to their skill set and then they would go to the bedside and have a handover report at the bedside using the records at the side of the bed, be that a cot or an incubator.

Although nurses have individual babies designated to them, they would frequently have to go to different nurseries as part of their role to assist other nurses with anything they might be doing with another baby or, for example, to collect medications or collect equipment from a different nursery. So there was a fluidity, as you would imagine, amongst the nursing staff in relation to moving between nurseries.

The doctors comprised the conventional grades of hospital doctor, consultant at the top, the specialist doctors in training below, registrars being next, then senior house officers. The doctors would cover the children's ward and the neonatal unit, the nurses only worked in the neonatal unit.

There was a consultant of the week, who covered both the paediatric ward and the neonatal unit, and during a night shift, there was a consultant on call. As you well know, on the night of 16/17 February, Dr Jayaram was the consultant on call.

[Baby K]'s mother, [Mother of Baby K], was admitted to the Countess of Chester on the morning of 15 February with abdominal pains; times 6 to 8 set out the contact and assessment. She was 24 weeks, 6 days' gestation and in preterm labour. Dr Sara Brigham, the consultant obstetrician and gynaecologist of the week at the hospital, and responsible for overseeing high-risk pregnancies, was asked to see her and reviewed and discussed her case and situation with Dr George, a registrar, that morning.

[Mother of Baby K] was transferred to the central labour suite at 12.30, times 9 to 11 front and summarise the relevant

documentation. She was given pain relief and steroids to slow down her uterine contractions.

There is, and was in 2016, a national guideline recommendation that at a gestation of 27 weeks, a baby should be born in a level 3 unit. However, in the agreed evidence of Ian Dady, a consultant neonatologist at St Mary's Hospital specialising in the care of babies undergoing newborn transport, Connect North-west neonatal transport services, he said:

"It is recognised that there are situations where there may be a risk to the mother's health or it is not feasible to complete a transfer. For example, because the mother is contracting regularly and in advanced stages of labour. The next best option is for the baby to be delivered locally, in other words in a level 2 unit, and then the neonatal transport team would organise a transfer after birth."

There was discussion as to whether or not they should be looking at an in utero transfer, in other words before the baby was born, to optimise the delivery in [Mother of Baby K]'s case. The process of locating a bed and a cot can be quite extensive and may take 2 to 4 hours. There are and were seven neonatal intensive care units in the north-west. Enquiries were made as to which tertiary level 3 hospital [Mother of Baby K] could be transferred to and it would have had to be Preston.

Tile 12. Not one of the nearer level 3 units.

A booking was made for transfer. However, it was cancelled because she was too unstable to be transferred. Dr Brigham had responsibility for the decision as to whether to transfer [Mother of Baby K] or not and concluded she should not be transferred because she was unstable. Preterm labour is very unpredictable and so the mum can go from the early stages of preterm labour to delivery within about 30 minutes. The decision was made that she was too unstable to be transferred out to Preston, tile 12.

The cervix was dilated up and the membranes were bulging, there was a risk that by undertaking in utero transfer, delivery could have been expedited and taken place in the ambulance. Dr Dady confirmed that responsibility for the decision rested with the Chester obstetric team and it was not at all a common occurrence for a transfer to be cancelled because of the instability of the situation of the mother.

Dr Babarao a consultant neonatologist now at Liverpool Women's Hospital, then working at Arrowe Park Hospital, in effect echoed the evidence of Dr Gibbs, which you also heard, that the outcome may have been better if the baby was or had been born in a

tertiary hospital. He also confirmed that the decision as to where the baby was to be born was an obstetric decision looking at the timing of labour, the distance between the local neonatal unit and the tertiary neonatal unit and the safety of the mother because the safety of the mother takes priority in that situation and you need to balance that against the baby being born extremely preterm in a local neonatal unit against the baby being born in the back of an ambulance.

He confirmed that a transfer from Chester to Preston, of which he wasn't aware, was a long way and made a big difference because of the travelling time between the two hospitals, both at the time and in hindsight, knowing that after [Baby K] was born her cord pHs were normal, which indicated that there was no evidence of baby's distress during labour. Dr Brigham still believed that there was a risk by undertaking in utero transfer, which could have expedited the delivery in an ambulance for the reasons that she explained in her evidence and that the right decision was not to transfer out and it was her decision to make.

So [Mother of Baby K] remained at the Countess of Chester Hospital for the baby, [Baby K], as she was, to be born there.

Well, that's the background to where we were, where we are, in relation to the birth of [Baby K]. At that point, you've heard a lot today, as I've said, you've been talked to a lot, we'll break off and I will complete my summing-up tomorrow morning and you will retire some time tomorrow morning to consider your verdict in this case. All right?

So the same rules and responsibilities apply as each day has gone by, of course it gets more and more important because there will be many thoughts going through your minds. Do not discuss anything with anyone about anything or anyone to do with this case. Do not conduct any research about anything or anyone to do with this case. You will have plenty of time tomorrow when you are all together to discuss the evidence in this case and your views upon it, uninfluenced, of course, by anything else that you may have heard or seen or read.

Thank you very much. 10.30 tomorrow morning.

(In the absence of the jury)

MR JOHNSON: I wonder whether I could invite consideration of making a single correction.

MR JUSTICE GOSS: Certainly, Mr Johnson.

MR JOHNSON: If your Lordship wants to find it, it's in the [draft] transcript at page 123, lines 15 to 21.

MR JUSTICE GOSS: Just bear with me. Page?

MR JOHNSON: Page 123 of the running transcript.

MR JUSTICE GOSS: I haven't got the running transcript in front of me.

MR JOHNSON: Can I remind your Lordship of what you said then? You said:

"Please remember that any event description on the sequence of events relating to entering or leaving the neonatal unit should say the opposite. In other words, if it says the cardholder was leaving, they were, in fact, entering the unit, and where it says 'entering' they were leaving. That, again, could have been a source of confusion."

The evidence, my Lord, is that all the descriptions are correct except -- and it's agreed fact 41 -- it's the "maternity neonatal to labour ward (in)" when it should be the other way round.

MR JUSTICE GOSS: So it's just that?

MR JOHNSON: It's just that one. All the other ones are correct.

MR JUSTICE GOSS: Right, I will correct that then. I knew that that was the critical one. Yes. I wouldn't want to say anything that was erroneous and that is erroneous.

MR JOHNSON: Yes, and it may be relevant on other doors, depending on the jury.

MR JUSTICE GOSS: Yes, exactly. I will correct that.

Mr Myers?

MR MYERS: We're grateful for that, there's nothing to add to that, my Lord.

MR JUSTICE GOSS: Thank you very much.

MR MYERS: May we see the defendant before she leaves the building?

MR JUSTICE GOSS: Yes.

MR MYERS: Thank you.

MR JUSTICE GOSS: You heard that?

DOCK OFFICER: Yes.

MR JUSTICE GOSS: Thank you.

(4.09 pm)

(The court adjourned until 10.30 am on Tuesday, 2 July 2024)