

Thirlwall Inquiry

IN THE THIRLWALL INQUIRY

Introduction

1. By an application dated 23 September 2024, Lucy Letby (the applicant) seeks designation as a Core Participant in this Inquiry.
2. On 18 August 2023 in the Crown Court at Manchester after a lengthy trial, the applicant was convicted of seven counts of murder and seven counts of attempted murder. The victims were all babies in her care on a neonatal unit where she was a nurse. Some of the babies who survived sustained life changing injuries. The applicant was sentenced to life imprisonment on each count and the trial judge, Goss J, imposed 14 whole life orders.
3. The applicant was acquitted of 2 counts of attempted murder and the jury could not agree on a further 6 counts of attempted murder. There was a retrial on one count of attempted murder upon which the jury did not agree and the applicant was convicted in July 2024. A further life sentence with a whole life order was imposed. The rest of the counts of attempted murder were directed to lie on the file not to be proceeded with without the leave of the Crown Court or the leave of the Court of Appeal Criminal Division.
4. The applicant's renewed application for leave to appeal against the fourteen convictions in August 2023 was heard over three days from 22 April 2024. It was dismissed at the end of the hearing. A 58 page judgment was handed down on 2 July, after the verdict in the retrial. The applicant pursues an application for leave to appeal against the fifteenth conviction. It is listed to be heard by the full Court on 24 October.
5. I understand that in the criminal proceedings the applicant retains trial counsel and solicitors who have acted throughout. It has been widely reported that there is a separate lawyer working on a case to present to the CCRC in respect of the 14

convictions at the end of the first trial. This application for Core Participant status is made on her behalf by a third legal team.

Timing

6. The Inquiry was announced in Parliament on 4 September 2023. It was set up formally on 19 October 2023 and the Terms of Reference were widely publicised. I made my opening statement on the Inquiry website on 22 November 2023. The process for applications for Core Participant status set out in a protocol issued to the public via the website required applications to be made on, or before, 11 December 2023. Most applications were submitted by that date. I allowed a small number of applications to be made within a short time after the deadline. On 7 August 2024, I refused a late application from Cheshire Constabulary lodged on 26 July 2024.
7. This application was received by the Inquiry at the beginning of the third week of hearings, which began in Liverpool on 10 September. On any view that is extremely late. It comes over four months after the preliminary hearing which took place on 15 May 2024 and nine months after the time specified in the protocol.
8. It is not suggested that the applicant and those representing her were unaware of the Inquiry or of the possibilities for application of Core Participant status. The reason given by her solicitors for making the application so late is that the applicant's attention has been on the criminal proceedings.
9. I am satisfied that there is no good reason for the lateness of this application. I accept that some weeks would have been spent on the criminal proceedings in the course of the last year but there was sufficient time to consider and make a decision about seeking Core Participant status between the date upon which the application for leave to appeal was lodged (September 2023) and the cut off date of 11 December 2023, and in any event well before September 2024. The applicant has been legally represented throughout. Specialist solicitors are not needed to make an application for CP status. I note that the applicant responded to the Nursing and Midwifery Council in their proceedings against her. She did not contest the application and said in writing that she is innocent.

10. By Rule 5 of the Inquiry Rules 2006 (the Rules) I may designate a person as a Core Participant at any time during the course of the Inquiry, provided that person consents. I will consider the application in accordance with the legal framework and will take into account its lateness as part of the exercise of my discretion.

Context

11. In summary, the Terms of Reference require me to investigate three distinct areas:
 - a. Part A is about the experiences at the Countess of Chester Hospital (the Hospital) and subsequently of all the parents of the babies named in the indictment.
 - b. Part B is about the conduct of the board, managers, doctors, nurses and midwives at the Hospital with regard to the actions of Letby while she was employed there as a neonatal nurse and to whom they told what and when. This includes what they told external bodies.
 - c. Part C is about the effectiveness of NHS management and governance structures, external scrutiny and professional regulation in keeping babies in hospital safe and well looked after, whether changes are necessary and, if so, what they should be, including how accountability of senior managers should be strengthened.
12. There is a non-exhaustive list of questions annexed to the full Terms of Reference, to which I intend to seek answers. The full Terms of Reference and list of questions are annexed to this ruling.
13. The Inquiry team has obtained statements from over 200 witnesses, more than 100 of whom are listed to give evidence between now and the end of the year. Where witnesses are not being called, their evidence will be read or summarised during the hearings. I have already heard evidence from parents and have completed the evidence gathering in respect of Part A of the Terms of Reference. The timetable for Parts B and C will be achieved provided all parties maintain focus on the relevant issues. On 27 and 30 September the evidence heard two full days of expert evidence directed to Part C, the wider NHS, which forms the backdrop to the evidence in Part B which began on 1 October.

Legal Framework

14. By Section 17 of the Inquiries Act 2005

“(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.

...

(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).”

15. Rule 5(2) of the Rules provides that:

“In deciding whether to designate a person as a Core Participant, the chairman must in particular consider whether—

- (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
- (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or
- (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report”.

Discussion

16. If a person falls within one or all the criteria in rule 5(2), it does not follow that I must designate them as a Core Participant. Fairness requires me to consider all the factors that I deem to be relevant to the application. I have a very broad discretion. Having been chairing the Inquiry for over a year, having heard all the openings and three weeks of oral evidence and being aware of much of the evidence that is to come, I am well informed on the issues that need to be explored in order to meet the Terms of Reference.

17. I proceed on the basis that the applicant meets the requirements of Rule 5(2)(a). I rather doubt that there will be explicit or significant criticism as envisaged in rule 5(2)(c) over and above the natural expression of repugnance at her crimes but I recognise that I do not

have sufficient certainty to exclude it and so accept that such criticism may occur. Accordingly I accept that the requirements of Rule 5(2)(c) are met.

18. Whilst the applicant does not rely on Rule 5(2)(b), I consider whether it applies. The focus of Parts A and B of the Inquiry is on how others were affected by, or what others knew of, Letby's offending. In my view, the applicant cannot be said to have a significant interest in these matters. It is plain that the applicant does not have a significant interest in Part C, which concerns the wider NHS. Accordingly, I find the criteria in Rule 5(2)(b) are not satisfied.
19. Having found that Rule 5(2)(a) and (c) apply, I now consider whether I should allow the application in the exercise of my discretion. I must consider all relevant factors.
20. In my view, there are significant reasons not to allow the application.
21. First, on behalf of the applicant it is submitted that "*her actions are at the heart of the Inquiry's investigation*" and that through the questions appended to the Terms of Reference the Inquiry places a "*spotlight on her actions and conduct*". This is not correct. The Inquiry is neither reinvestigating nor reviewing the facts underlying the convictions. The Inquiry is likely to hear some evidence of the applicant's conduct, criminal or otherwise, but the questions I have to answer relate to the conduct of others, as a careful reading of the Terms of Reference reveals.
22. When the Inquiry was announced by the Secretary of State, he explained to Parliament that the purpose of the Inquiry was to examine "*the case's wider circumstances, including the trust's response to clinicians who raised the alarm and the conduct of the wider NHS and its regulators*"¹. In my opening remarks I said that the convictions stand. In her opening, Counsel to the Inquiry set out the Inquiry's approach: "*the Inquiry's unwavering focus will not be examining the convictions, but rather what the response of those at the time was and should have been to what they knew or should have known at that time*".

¹ <https://hansard.parliament.uk/commons/2023-09-04/debates/B18741EB-DC54-40D6-98B8-76FB066FFB26/CountessOfChesterHospitalInquiry>

23. Second, I am able to investigate the experiences of the parents (Part A) and what others knew at the hospital about the sudden and unexpected collapses of babies on the neonatal unit (Part B) without any input from the applicant. She has nothing to contribute to Part C. It is for those reasons she has not been asked to provide a statement to the Inquiry. Further, I take into account that the applicant has twice given evidence to juries and has been disbelieved.

24. Third, the Terms of Reference of this Inquiry are premised on the fact of the convictions. I repeat that I shall not be investigating the convictions themselves. I infer from the application that the applicant has an interest in using these Inquiry proceedings to defend her interests in the criminal proceedings, in particular in respect of any further criminal investigations and submits that the evidence to the Inquiry will “*undoubtedly form a part of the body of material which will be considered*” in determining whether future charges are brought. Whilst I accept that some evidence may come to light which may be of use to the police in their ongoing investigations into the applicant’s conduct at the COCH and at Liverpool Women’s hospital, the police have been carrying out their own investigations for many months, independently of the Inquiry. In my view, the risk of further criminal charges being brought is not a matter that should concern this Inquiry. The Inquiry is being conducted in public and should evidence come to light which is helpful to the applicant in respect of her attempt to challenge her convictions or resist further charges she will have the benefit of that information. The fact that the applicant intends to challenge the convictions, or reduce the likelihood of further charges, is not a reason to grant her Core Participant status. On the contrary, such an approach would waste time and delay the Inquiry.

25. Fourth, Core Participants have a number of rights as a result of their status. I also expect them to further the work of the Inquiry to engage with the Inquiry team on matters of practice and procedure, including consideration of the instructions to expert witnesses. As to the latter, the time for such consideration has passed. Save for one, the experts have given evidence. Given the nature of the applicant’s convictions and her inevitable focus upon her position in the criminal proceedings, the likelihood of her furthering the work of the Inquiry is low.

26. Fifth, I consider that designating the applicant as a Core Participant at this late stage would be very disruptive. The solicitors submit that because they are experienced in working on Inquiries there will be no delay were the applicant to be designated a Core Participant. This is unrealistic. My experience is that granting Core Participant status to any Core Participant adds to the time everything takes. Core Participants are entitled to disclosure of all the documents which run in this case to many tens of thousands. They are involved in the process of Rule 10 questioning. It is inevitable that the addition of the applicant to the list of Core Participants will slow down the Inquiry and significantly increase costs, something I am required to consider by section 17 of the Act.
27. I have considered all the points made by the applicant's lawyers, including the reassurance offered that they will safeguard the parents' interests. I accept that the reassurance was made in good faith but it is impossible to achieve. The mere fact of this application will cause significant distress and upset to the parents, one of whom said in evidence how important it was to be able to participate in proceedings which were not all about the applicant. It is for the parents' legal teams to safeguard their interests which to date they have done effectively. Were I inclined otherwise to grant core participant status to the applicant the effect on the parents would not be a reason to refuse it.
28. I remind myself of the lateness of the application and the absence of any good reason for it. I declined the police application for Core Participant status, in part, because it was lodged so long after the original Core Participant deadline.
29. Fairness does not require me to designate the applicant as a Core Participant. Such designation would not assist me in fulfilling the Terms of Reference. On the contrary, I consider it would create unnecessary cost and delay. The applications for Core Participant status and the consequent application for Recognised Legal Representative are dismissed.

Lady Justice Thirlwall DBE

2 October 2024