Thirlwall Inquiry

Ruling on the application to pause the Inquiry

1. The hearing of the evidence of the last witness in this case was listed for Monday, 24th February at 10 o'clock. On the late afternoon of Friday, 21st February, Ms Blackwell, her junior and her solicitor wrote to me on behalf of Mr Harvey, Ms Kelly, Mr Chambers and Ms Hodkinson seeking a pause to the Inquiry. They rely on section 17 of the Inquiries Act 2005. They wrote at the same time to the Secretary of State to seek a suspension under section 13 of the same Act.

2. It is necessary at this stage only to read the first paragraph of the letter, which reads as follows: "*We formally write to ask you to exercise your duty under section 17(3) of the Inquiries Act 2005 and pause the current public inquiry proceedings pending the outcome of the Criminal Cases Review Commission's consideration of an application made by Lucy Letby in respect of her criminal convictions for murdering seven babies and attempting to murder seven others between June 2015 and June 2016 at the Countess of Chester Hospital*." I turn then to the final line of the final page which reads, *"the only reasonable course of action, albeit a regrettable one, is to pause proceedings until the appellate process has run its course."*

3. I arranged for the letter to be sent over that weekend to all Core Participants. I directed that the hearing on Monday the 24th would not be affected by the request and that where any Core Participant wished to make any submissions in respect of the request to pause, they should be added to closing submissions which were already listed for this week, beginning 17 March, in Liverpool. I extended the time for written submissions to accommodate the additional work required.

4. On the following Friday, 28th February, in the early evening Mr David Davis MP wrote to me also seeking a pause to the Inquiry.

5. This Monday morning, about half an hour before the hearing was due to start, I received a long letter from a firm of solicitors, Bhandal Law, who represent Ms Letby. The solicitors asked me to suspend the Inquiry, *"to wait for the outcome of the review to take place"*. That is a reference to the CCRC, the Criminal Cases Review Commission, to whom Ms Letby has made a preliminary application that her case should be referred back to the Court of Appeal Criminal Division.

6. The history of her convictions at two trials and the dismissal of her two applications for leave to appeal her convictions has been set out on earlier occasions and I do not repeat it. As matters stand, Lucy Letby is serving 15 whole life sentences for offences of murder and attempted murder.

7. I have approached the Inquiry on the basis that Lucy Letby is guilty of the crimes of which she has been convicted. That she is guilty is the consequence of the convictions under the law of this country. It is not for me in the discharge of my duties under the Inquiries Act 2005 to seek to explore alternative theories about the deaths of children, unless the Terms of Reference require me to, which they do not.

8. Requests to the Secretary of State for Health and the Secretary of State for Justice were sent on 30 July 2024 from a number of experts with a request that the Terms of Reference should be amended in the light of doubts about the convictions. The Secretary of State for Health replied refusing the request. Such an amendment would have led to this public inquiry being used as a vehicle for a collateral attack on the convictions, cutting across the criminal justice system, including the process for challenging convictions via the CCRC and ultimately the Court of Appeal Criminal Division.

9. On 24th September 2024, part way through the hearings of this Inquiry, I received an application from a firm of solicitors then representing Lucy Letby. They applied on her behalf for Core Participant status. I refused that application. My decision was not the subject of any legal challenge, and it will be uploaded to the website of this Inquiry later this week.

10. Until 21st February this year there was no suggestion by any of the Core Participants that this Inquiry should be paused or suspended, or the Terms of Reference changed. What seems to have prompted the letter of Friday, 21st February, was a press conference which took place on 4th February. This was, I believe, the second press conference which had been organised by Ms Letby's team. The first took place just before Christmas. On 4th February it was announced by Ms Letby's barrister that a preliminary application had been sent to the CCRC on 3rd February. Summaries were released of reports by a number of experts from across the world, across a range of disciplines. They had, I understand, been provided with medical records of the babies on the indictment. They had then carried out their own review of the records, at the end of which they concluded that there was no medical evidence of murder or deliberate harm. At the press conference, full reports were promised by the end February. It is now said that they will be provided to the CCRC this week.

11. In a statement on their website, in February, the CCRC say that they have received a preliminary application from lawyers for Lucy Letby. They say that it is not possible at this stage to determine how long it will take to review the application and note that a significant volume of complicated evidence was presented to the court during Letby's trials. The CCRC say that they expect more submissions from Ms Letby's team. They also say that they will not to be commenting on their own progress. I was told by Miss Blackwell during the hearing that a commissioner has been allocated and the current legal team is to meet him or her soon.

12. A brief word about the medical records of the babies on the indictment and of their mothers. I do not doubt that such records are relevant to the application to the CCRC and have rightly been provided to them. They were relevant to this Inquiry and were rehearsed as necessary with advance notice to the parents and, of course, with their consent. It is apt, I think, to remind ourselves of the observation of Mr Baker KC yesterday when he said: "*Whatever side of the debate people are on, people should remember that the dead and harmed are not public property to be dissected on television or on the internet*."

13. In the light of the reports which are described as "*fresh evidence*", Ms Letby's solicitors asked me to suspend the Inquiry under section 13 of the Inquiries Act 2005. This section of the Act applies not to me but to the Secretary of State. I assume a letter has by now been sent to him to that effect and I say no more about the solicitors' letter sent on Monday morning.

The law

14. The power to suspend a public inquiry rests with the Secretary of State, here the Secretary of State for Health and Social Care. Section 13(1) provides that: "*The Minister may at any time, by notice to the Inquiry Chair, suspend the Inquiry for such period as appears to the Minister to be necessary to allow for -- (a) the completion of investigation into any of the matters to which the Inquiry relates, or (b) the determination of any civil or criminal proceedings arising from those matters*."

15. In considering the wording of section 13 in the Supreme Court, a case reported as In the matter of an application by *JR222 for Judicial Review (Appellant) (Northern Ireland*) Lord Stephens, Justice of the Supreme Court, made the following observations at paragraph 60 to 65:

> "*(a) the purposes of a suspension were limited to those set out in subsections 1(a) and 1(b) of section 13*.
>
> *b) the existence to suspend an Inquiry presupposes the ability to continue an Inquiry while criminal proceedings are ongoing.*

(c) the power to suspend is vested in the Minister who must consult the Chair of the inquiry before doing so.

(d) the period of suspension is until the day specified in the notice or until further notice is given by the Minister.

(e) if the Minister suspends an inquiry he must provide his reasons and lay a copy of the notice before the relevant Parliament or Assembly."

16. Having considered two possible interpretations of section 13(1) and applying the ordinary principles of statutory interpretation as set out *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department*, Lord Stephens concluded that: "*The true interpretation is that section 13(1) naturally reads as one question which must be considered and answered as a whole. On this basis necessity applies to both the purposes in section 13(1)(a) and (b) to the period of suspension*." Ms Langdale submits that it follows that the threshold for suspension of an inquiry under section 13 is a high one.

17. In addition to the power to suspend the Inquiry, of course, as I was reminded by a number of counsel yesterday, it is the Secretary of State who has the power to set up the Inquiry, to set the Terms of Reference in consultation with the Chair, and each of them has pointed out to me that before exercising the power to suspend the Secretary of State must consult the Chair.

18. It is against that legal backdrop that the former executives seek to make their application under section 17 of the Inquiries Act, describing it as a duty which requires me to pause.

19. Section 17(1) provides that: "*The procedure and conduct of the Inquiry are such as the Chair may direct*." And 17(3) that: "*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 to others)*."

20. The DHSC, the Department of Health and Social Care, makes no submissions either on the law or the detail of the request. This is unsurprising, given that the Secretary of State has a role under section 13 of the Act, as I have identified.

21. NHS England make three points on the law.

22. First, that the power to suspend the Inquiry rests with the Secretary of State under section 13 of the 2005 Act, not with the Chair under section 17 of the 2005 Act.

23. Second, if the Secretary of State is considering exercising the power under section 13, he would be required to consult with the Chair.

24. Third, he submits that I may use the occasion of these submissions, i.e. the submissions being made by counsel for the Core Participants, to obtain the positions of the Core Participants in the Inquiry to inform any representations that I may seek to make to the Secretary of State in the event of a consultation with me about a request to suspend.

25. On the facts, NHS England adopts a neutral position.

26. The RCPCH make no submissions on this issue.

27. On behalf of the CQC, Ms Richards submits, at paragraph 92 of her submissions, that section 17 contains no express power to pause an inquiry, but, as I've set out above, provides that the procedure and conduct of an inquiry are as the chairman of the inquiry may direct, and that in making any decision the chairman must act with fairness and with regard also to the need to avoid any unnecessary costs. She says it may be arguable that section 17 empowers a Chair to "*pause*" an inquiry where it would be unfair to continue. For the purposes of this ruling, I shall proceed on the basis that it is at least arguable that I have that power.

28. Ms Richards, like Mr Beer on behalf of NHSE then suggests that halting an inquiry is principally a matter for the Minister under section 13, that the Minister's powers under section 13 are highly circumscribed and can only be exercised following consultation with the Chair where it is necessary for one of the statutory purposes to which I have referred. That a ministerial decision to suspend is subject to such a high bar suggests that a similar decision by an Inquiry Chair should be similarly constrained. Ms Langdale makes the same point on behalf of the Inquiry.

29. Ms Richards submits that the fact that parallel investigations are ongoing, does not, without more, require a Minister to suspend an inquiry and it follows, therefore, that the mere fact of parallel proceedings would not, without more, require the Chair to do so on grounds of fairness.

30. She goes on to say, assuming that section 17 does empower the Chair to pause the Inquiry, this would require the Chair to consider whether it would be fair to all the participants in the Inquiry to suspend it for an indefinite period pending a decision by

the CCRC as to whether the case should be referred to the Court of Appeal in circumstances where, as things stand, there is a conviction and matters have proceeded no further than a reference to the CCRC.

31. Mr Kennedy, on behalf of the Countess of Chester Hospital, in his written document set out subsections 17(1) and (3) and submitted that:

"the Chair may proceed to consider the evidence received and conclude the Inquiry in line with the section 17(3) duty."

32. He made two observations:

"(a) To pause the Inquiry pending the outcome of the CCRC application process and any further process that may subsequently be initiated would be to effectively suspend it for an indeterminate period. That period could be lengthy. Any pause therefore risks preventing the Inquiry from fulfilling its Terms of Reference in a timely manner. Those Terms of Reference were decided by the Secretary of State, and it can be in neither the public interest nor the interests of those involved in the Inquiry process for the fulfilment of those Terms to be frustrated for a long period.

(b) Letby's convictions result from a full and lengthy judicial process. Those convictions stand. Leave to appeal on the basis of new medical evidence has already been considered and refused. Whilst the Trust does not comment on the strength of the application made by Letby's legal team to the CCRC, it observes that it cannot be fair, reasonable or proportionate to postpone the Inquiry based on the mere possibility that her case will be referred to the Court of Appeal. That possibility will always exist. Were her case in fact to be referred to the Court of Appeal by the CCRC on its merits, the Trust may wish to revisit its stance.

33. On behalf of Family Group 2 and 3, Mr Baker submitted that the power to suspend, which is effectively, he says, what is being sought here, rests only with the Minister and not with the Chair.

34. Returning to the letter from Ms Blackwell, at page 2 she says:

"*Where there is a real possibility as appears to be the case here, that Ms Letby's convictions may be referred by the CCRC to the Court of Appeal and there quashed, we submit that the public inquiry proceedings must be paused. To ignore the appellate proceedings which have now commenced would be wrong for the following reasons. Firstly, there is a real risk that you would be in breach of your duty to act fairly under section 17(3) of the Inquiries Act 2005 and, two, there is a real risk that*

you would be in breach of your duty to have regard to the need to avoid any unnecessary cost under section 17(3)."

35. One preliminary point in respect of that submission. There are, at the moment, no criminal proceedings afoot. An application to the CCRC does not begin appeal proceedings. That comes later, if there is a reference to the Court of Appeal Criminal Division. Everyone agrees that it is not for me to assess the application being put before the CCRC. I have seen some of the summary reports submitted, but I have not seen the application, nor would I expect to. At the same time, Ms Blackwell submits that the effect of the reports, which are in fact so far untested, means that there is a real possibility that the convictions will be referred to the CACD and there quashed.

36. Set against that assertion are the submissions of Mr Skelton, who points out there is nothing new in the reports and that the analysis is flawed, and those of Mr Baker who conducted a detailed forensic review of much of the medical evidence. I express no view on the merits of the application to the CCRC. It is clear that this will be a very lengthy process for the CCRC and, were a referral to take place, the Court of Appeal Criminal Division.

37. It is inevitable that the pause being sought is of a length which is entirely outside of my control, but it appears on the face of it to be a very lengthy one. This is rather more than an adjournment granted, for example, to allow the parties to deal with disclosure or to support a witness and so on, the sorts of pauses which are entirely routine in inquiries. This increasingly looks in effect like a suspension.

38. As I say, for the purpose of this request I will assume that I have the power to pause where fairness requires it, as Ms Richards suggests.

39. Turning, then, to the two limbs of the submission, it is convenient to deal first with costs.

40. I have to have regard to the need to avoid unnecessary costs, and that is something that I have had in my mind and in my actions since I was appointed to chair this Inquiry.

41. The Inquiry has completed its evidence well within the time estimated and, as a result, it is running at a lower cost than had been originally thought. What remains is the report writing and, in all likelihood, some warning letters in respect of potential criticisms. That will be followed, of course, by the costs of publication, but the main costs have already been incurred.

42. If the report is not written now but written at some point in the future, it is inevitable that the costs will be greater. Experience has shown us that the longer the time between the completion of a case, particularly one involving a great deal of evidence, and the judgment or ruling, the longer it takes to provide the judgment or ruling. It follows that there will be additional costs in the event of a pause

43. In the meantime (i.e. during the pause), a slimmed down secretariat would be required while the Inquiry remains in being and in suspension or pause. Whether the same staff could be retained is rather doubtful, and so it may well be that it is necessary to set up a fresh team for warning letters and publication. All of that would add to and not reduce costs. I am quite satisfied, therefore, that, having regard to the need to avoid unnecessary costs, this is not a matter which supports the application for this pause.

44. That leaves the question of fairness.

45. I have set out what is required of me. There was no suggestion from any of the Core Participants at the time I opened the hearings that it was unfair to observe that the convictions stood, nor was it suggested that it was unfair to work on the basis of the convictions, notwithstanding what I then described as "*noise*".

46. The process of the Inquiry has been conspicuously fair. Every Core Participant has been sent in advance an outline of the questions to be asked and the documents to be looked at, and no one has been taken by surprise by the documents. All counsel had the opportunity to ask questions of their clients and of other witnesses. Any requests to ask questions were agreed by Counsel to the Inquiry, and I was not required to adjudicate on a single application.

47. The Inquiry does not become unfair because there is a possibility, as is asserted, that all the convictions are unsafe.

48. It is important to repeat what I have said on a number of earlier occasions. I completely accept and have approached the Inquiry in this way; that it is essential to guard against hindsight when judging the actions of people eight, nine and ten years ago. That is not going to change once I move into the report writing stage.

49. As I have said before, it is not the actions of Lucy Letby that I am scrutinising, it is the actions of all those who were in the hospital and within the Terms of Reference whose actions I am reviewing, what they did at the time in the light of what they knew at the time, and in the light of what they should have known at the time.

50. There are already large numbers of concessions about what was not done that should have been done. Those significant concessions come from the organisations, the hospital, including the doctors, and the managers have made a number of concessions, including that they should have communicated better with parents and should have provided pastoral care for the consultants. But perhaps principal and most obvious among the concessions made by just about everyone is the acknowledgement that there was a total failure of safeguarding at every level, and that will not change. It is a matter which has been debated at some length in the course of the Inquiry and one that, it seems to me, inevitably will feature in any report.

51. There were some submissions that one type of witness was treated differently from other types of witness, doctors as opposed to managers. I am not going to make any observations about that issue in this ruling. It seems to me that it is appropriately dealt with in the course of a report when I am reviewing the whole of the evidence but not at this stage.

52. I remind myself of the submission made by a number of people that fairness to all the parties is required, not just to a single set of Core Participants. I am not satisfied that there is any unfairness in the current situation.

53. I am satisfied that the process has been fair.

54. At the very end of her submissions, Ms Blackwell suggested that I might consider a hybrid approach. This would be to publish the report in respect of Parts A and C but not Part B until the resolution of the criminal cases. I accept that from the perspective of her clients Part B is the most contentious and potentially difficult but the reason why Herculean efforts were made by everyone to be ready for Part B so it could be heard immediately after Part A and before Part C was because they flow one from the other. The experiences of the parents cannot be separated from the actions of the people in the hospital. Equally importantly, recommendations are bound to come out of my findings. I have already said as much. If Part B were omitted, there is a risk that recommendations lose their anchoring in the facts it is a point well made that the impetus for implementation will be reduced in the absence of findings of fact.

55. Accordingly, for all the reasons that I have rehearsed during the course of this somewhat lengthy extempore judgment, the application is refused.

56. I should say that, of course, the question of the timing of the publication of the report is, as always, a matter for me and I will always keep that under review, as I would do in any other Inquiry.

57. That concludes my ruling.

Thirlwall LJ
Chair
19 March 2025