

Tuesday, 31 January 2023

(10.30 am)

(Delay in proceedings)

(10.59 am)

MR JUSTICE GOSS: Mr Myers.

Application re DISCLOSURE

Submissions by MR MYERS

MR MYERS: May it please you, my Lord, first of all we are grateful to the court for the additional time given this morning just to discuss matters arises from this application. That's been helpful.

The defence are making an application or make an application under section 8 of the Criminal Procedure and Investigations Act 1996, and I can say straightaway the terms of it are limited, even limited by reference to the material given to your Lordship, so I will narrow that down very shortly.

MR JUSTICE GOSS: Thank you.

MR MYERS: But the documents your Lordship should have are the bundle provided by the defence, which includes the application, a response and bundle from the prosecution provided yesterday -- no complaint about that, that's just the way the timing has been -- and then an additional response this morning.

MR JUSTICE GOSS: An amended response?

1 MR MYERS: An amended response, yes.

2 MR JUSTICE GOSS: Which incorporates the original response
3 with some amendments?

4 MR MYERS: Yes.

5 MR JUSTICE GOSS: I have discarded the original one.

6 MR MYERS: Very well, I'm working from the amended one as
7 well. It has yellow highlighting and red lettering for
8 the additions.

9 MR JUSTICE GOSS: Unfortunately, I don't have a copy
10 (inaudible), so I'm looking at it on paper. Right.

11 MR MYERS: We are grateful to the prosecution, who have
12 considered these responses properly, as one would
13 expect, have provided disclosure in some cases and
14 therefore, although disclosure request 4 dealt with
15 various areas, most of that does not arise now. Some
16 areas the prosecution have explained they can or
17 will not make disclosure and we don't pursue those.
18 There's really one area where we return or come before
19 your Lordship with a specific request.

20 MR JUSTICE GOSS: Right, thank you.

21 MR MYERS: I'll focus upon that and therefore I won't go
22 into the full extent of disclosure request 4 or the
23 section 8 application because that no longer is
24 a concern.

25 The area of focus for the defence is that which is

1 in the section 8 application, not the formal notice but
2 the submission, and it's in paragraph 6 in particular
3 and an element of paragraph 7, but I'll assist
4 your Lordship by going straight there.

5 It's in the defence bundle behind divider 2. That's
6 where the application is. If your Lordship turns to
7 page 3 of that application.

8 MR JUSTICE GOSS: It's paragraph 6, beginning paragraph 16
9 in square brackets?

10 MR MYERS: That's right. We'd set out in paragraph 5 areas
11 we were pursuing but this is the principal area now.
12 It's paragraph 6, which relates to a process the
13 prosecution appear to have undertaken in deciding how to
14 proceed with various children.

15 Before enlarging upon that, having shown
16 your Lordship where it is that we are primarily
17 concerned, I'd just like to explain, so it's quite
18 clear, why the defence are requesting material relating
19 to how the prosecution have made these decisions.

20 The defence are concerned by the extent to which
21 Ms Letby is a focus of blame by virtue of being Ms Letby
22 rather than by virtue of evidence outside that fact
23 pointing to the commission of an offence or, more
24 particularly, commission of an offence by her.

25 Your Lordship may recall the table at CH16 -- and

1 just to assist, if Mr Murphy is able to assist, it's
2 page J242 of the exhibits, what might be described as
3 the presence table or however it's put. But
4 your Lordship will be familiar with that and it
5 identifies Ms Letby as being present, and the only
6 person present, on all the occasions set out in that
7 table and, one can see from the line at the bottom,
8 present by some great degree compared to anybody else.
9 I'm grateful for that.

10 Unless your Lordship wishes to return to that
11 immediately, we can take that down. It was just to
12 refresh the court as to that document. Thank you,
13 Mr Murphy.

14 Of course there are two ways in which one can regard
15 that. One may be that, having selected particular
16 events and looked at them, it turns out that Ms Letby
17 was present on each occasion. An alternative would be
18 that Ms Letby was in effect the parameter for selection
19 of cases and inevitably, therefore, those cases which
20 have been found to be worthy of further consideration
21 are automatically associated with her.

22 So what the defence have been concerned by, and what
23 lies behind requests in disclosure request 4 and this
24 item that's carried through into this section 8
25 application, is a way of assessing the extent to which

1 the mere fact that Ms Letby was present has in effect
2 become a search term and a parameter for bringing
3 a prosecution or bringing the allegation, I should say.

4 We recognise that where deaths took place, she is
5 present, as set out there. The real issue this goes to
6 is where the question of collapses is considered
7 because, we would observe, what is an inexplicable
8 collapse or a suspicious collapse is plainly far more
9 nuanced than the question of a fatality. There's no
10 nuance to that. Our concern is that it's the presence
11 of Ms Letby itself that has made the difference to that.
12 And if that is right then aspects of the table which
13 we've just gone to, and that aspect of the prosecution
14 case, may reflect as much the way in which the matter
15 was investigated and the search term as what would
16 follow necessarily from the events that took place.

17 Therefore to consider that and to consider therefore
18 whether the investigation was conducted with appropriate
19 breadth in that area -- and we make reference to
20 paragraph 3.5 of the CPIA code, which we're grateful to
21 the prosecution for including in their bundle of
22 documents which were received yesterday. For
23 your Lordship's reference it's at page 4 of that bundle.

24 MR JUSTICE GOSS: It would help if I had my laptop because

25 I haven't printed it all off. I'm just wondering if the

1 usher would be kind enough -- sorry to disturb you, but
2 could you go to my room, please, and ask my clerk to
3 bring in my laptop, or you bring in my laptop.
4 Thank you very much.

5 Sorry, Mr Myers, please do carry on. Page 4?

6 MR MYERS: It's at page 4 of the prosecution bundle and I'll
7 just read the relevant paragraph of the code of practice
8 out for your Lordship and for the court. It deals with
9 the section under the code for general responsibilities
10 and paragraph 3.5 says:

11 "In conducting an investigation the investigator
12 should pursue all reasonable lines of inquiry whether
13 these point towards or away from the suspect. What is
14 reasonable in each case will depend on the particular
15 circumstances. It is a matter for the investigator,
16 with the assistance of the prosecutor if required, to
17 decide what constitutes a reasonable line of inquiry in
18 each case."

19 Therefore what the defence sought to determine is
20 the extent to which Ms Letby was a focus of selection of
21 cases. Having been concerned as to that, and having
22 considered the material disclosed in the relevant
23 schedules, we come to what we have in paragraph 6.

24 I can hand to your Lordship -- in fact, we
25 considered it would be helpful to have the two documents

1 during the period when the following neonates
2 encountered a significant event on the highlighted times
3 and dates."

4 And it sets out there the names of children who are
5 on this indictment.

6 A matter of concern to the defence was the reference
7 to the case review flow chart and the investigative
8 threshold and the matrix score.

9 In a similar vein, under a different schedule, and
10 it's the attached sheet, the second entry down is
11 document 9.2. It says D2919. This document is a case
12 review flow chart for a child with the initials YY:

13 "Expert review indicates that there was a harm
14 matrix score of 55..."

15 Sorry:

16 "Expert review indicates that there was harm.
17 Matrix score of 55 indicates there will be a peer review
18 and investigation."

19 That will come as no surprise to your Lordship:
20 there is a substantial body of unused material in this
21 case. On behalf of the defence, where we have raised
22 enquiries, we have been as focused as we can be. This
23 only relates to two matters after a lot of consideration
24 and assistance from the prosecution.

25 Returning therefore to the written submission

1 we have, perhaps it will make easier sense now in
2 sub-paragraph 6 where we have talked about where the
3 document refers to the investigative threshold and how
4 the flow chart indicates the investigation should take
5 place, and then a further reference to the case review
6 flow chart and your Lordship sees where those come from
7 now.

8 So it's with regard to that that the defence have
9 made the enquiries that we do make in (i) to (vii) after
10 that because we seek to know the extent to which
11 Ms Letby is herself a factor in this scoring and the
12 weight given to that to better be able to determine the
13 extent to which some of these allegations merely reflect
14 her presence and that that has made all the difference
15 rather than the strength of the medical evidence as
16 such.

17 We're grateful for the prosecution for going through
18 all these matters in the detail they have, but as to
19 that one, in their response they make it plain or they
20 say there is nothing to disclose. We question that
21 because if it's the case that the difference in a matter
22 becoming an allegation or not lies in the identity of
23 Ms Letby rather than the sheer strength of the medical
24 evidence, that is something, we submit, that is capable
25 of assisting the defendant or potentially undermining

1 the prosecution case on that count.

2 It may be that if there is a document or a matrix or
3 some written criteria, it might even be something
4 your Lordship should see before any final determination
5 is made as to this. But that is the thrust if the
6 submission that we make now, having had the benefit of
7 the exchange of documents and further discussions.

8 I should add, on the final page of our application
9 your Lordship will see sub-paragraph (vii). If
10 your Lordship would kindly turn to page 4 of our
11 application.

12 MR JUSTICE GOSS: Yes, I have it, thank you.

13 MR MYERS: We set out there, at the four numerals under
14 sub-paragraph (vii), the request that was in the
15 original disclosure request at paragraph 17 and there
16 were a series of enquiries, which in a way to a large
17 extent have been answered to us in one form or another
18 now, for which we are grateful.

19 7(ii), which is:

20 "Confirmation of whether any of these cases do not
21 involve Lucy Letby being present on the unit at the time
22 of an event of interest (this means cases that have been
23 reviewed)."

24 That is a matter to which we would still seek an
25 answer if the court considers we're entitled to it,

1 a straight answer to that, whether or not her presence
2 as a person of interest is the factor.

3 It's right on the point of what lies behind our
4 request under paragraph 6. But my Lord, that is the
5 extent of this application.

6 MR JUSTICE GOSS: Sorry, maybe I'm misunderstanding it.

7 7(i):

8 "Confirmation of the total number of cases reviewed
9 in the course of this investigation."

10 And you say that that information is available to
11 you, you know the total number of cases?

12 MR MYERS: We do have a total number, yes.

13 MR JUSTICE GOSS: All right.

14 MR MYERS: We've had disclosed to us a variety of cases. We
15 understand those are the cases that have been
16 considered.

17 MR JUSTICE GOSS: Right.

18 MR MYERS: And therefore we work on that basis that we know
19 what this involves. But we don't know beyond them what
20 other cases have been considered, therefore thinking
21 that through, I'm grateful to your Lordship for
22 identifying it, that may be a matter which would be very
23 helpful to have a figure as to that if it can be
24 disclosed to us.

25 MR JUSTICE GOSS: Well, no, but (ii) says:

1 "Confirmation of whether any of these cases..."

2 In other words the cases that have been reviewed
3 in the course of the investigation:

4 "... do not involve Lucy Letby."

5 That's not the point that you're making now, you're
6 saying something else.

7 MR MYERS: In fact then I'm not being clear about that --

8 MR JUSTICE GOSS: Yes.

9 MR MYERS: -- and I'll return to that.

10 Your Lordship is quite right: we need to know how
11 many cases were reviewed and, of those cases, how many
12 did not involve Lucy Letby if we can be provided with
13 that information.

14 MR JUSTICE GOSS: Exactly --

15 MR MYERS: Your Lordship is quite right.

16 MR JUSTICE GOSS: -- if any of them.

17 MR MYERS: If any of them.

18 MR JUSTICE GOSS: And if so, how many.

19 MR MYERS: Yes.

20 MR JUSTICE GOSS: But this is -- just jumping back a bit
21 now, these are cases which, whatever the matrix is or
22 whatever the criteria was for conducting further
23 investigation, these are cases which, on the initial
24 sifting process, it was considered should be the subject
25 of further investigation?

1 MR MYERS: Yes.

2 MR JUSTICE GOSS: There is further investigation and that
3 does not involve any -- they don't become a baby in this
4 case. So what's the relevance of it? That's my
5 question. Why is it therefore disclosable?

6 MR MYERS: If the only cases that were ever identified were
7 cases where Ms Letby was present, that may be relevant
8 in assessing the extent to which she is the defining
9 parameter for any consideration of the cases. Again, we
10 return to the question of the collapses rather than the
11 fatalities --

12 MR JUSTICE GOSS: Yes, I understand that.

13 MR MYERS: -- because they're the ones that are far more
14 nuanced and we consider that that would be relevant,
15 potentially, because it would suggest that there has
16 been a focus, whether right or otherwise, upon her
17 rather than simply looking at the medical picture and
18 taking it from there. So I'm grateful to your Lordship
19 for --

20 MR JUSTICE GOSS: I'm trying to have it clear in my mind
21 exactly what it is that you are seeking disclosure of.

22 MR MYERS: I made the mistake of going straight to 7(ii)
23 without basing that upon 7(i), and your Lordship is
24 right, the two need to be considered together, 7(i) and
25 7(ii), they are part of the same enquiry.

1 Paragraph 6, I have already dealt with.

2 MR JUSTICE GOSS: Yes, you have.

3 MR MYERS: That's a discrete enquiry in its own right, but
4 that is the extent of the enquiry that we raise.

5 Thank you, my Lord.

6 MR JUSTICE GOSS: Thank you, Mr Myers.

7 Mr Johnson.

8 Submissions by MR JOHNSON

9 MR JOHNSON: So far as the case review flow chart or the
10 matrix is concerned, that's a tool that was introduced
11 as part of the review after Lucy Letby had been
12 identified by the inquiry as the perpetrator for the
13 offences on which she is presently standing trial. In
14 other words, it wasn't used in the course of this case.
15 Therefore we say it is irrelevant.

16 Whilst the information or the basis for further
17 police inquiries into Lucy Letby may be of great
18 interest to Lucy Letby, they are irrelevant to the
19 issues in this case. So that is the reason why we have
20 taken the decision we have.

21 MR JUSTICE GOSS: Irrelevant according to the law
22 in relation to obligations to disclose?

23 MR JOHNSON: Quite.

24 MR JUSTICE GOSS: Because they cannot be considered,
25 reasonably be considered, to be capable of undermining

1 the case for the prosecution against the accused or of
2 assisting the case for the accused?

3 MR JOHNSON: Precisely. So section 7A(2)(a) of the Criminal
4 Procedure Investigations Act.

5 MR JUSTICE GOSS: Which I've just quoted.

6 MR JOHNSON: You have.

7 MR JUSTICE GOSS: Right. So that's what you say in relation
8 to that?

9 MR JOHNSON: Yes.

10 MR JUSTICE GOSS: Then?

11 MR JOHNSON: Well, so far as how many other cases the police
12 are investigating and whether or not Lucy Letby was
13 there, same point. It would be odd, wouldn't it, if the
14 Crown were doing anything other than proceeding on the
15 basis that this was anything other than a true bill,
16 this case, this trial. So making that common sense
17 deduction, as no doubt my learned friend and Lucy Letby
18 have, it would be fairly odd if in investigating what
19 else she may or may not have been up to, they weren't
20 looking at cases where she was there. But this has got
21 nothing to do with disclosure, those common sense
22 deductions which I'm sure have been made on the other
23 side. But us answering the question and confirming or
24 denying whether that is the state of play is no part of
25 our disclosure obligations under the Criminal Procedure

1 Investigations Act.

2 MR JUSTICE GOSS: Right.

3 MR JOHNSON: Thank you.

4 MR JUSTICE GOSS: Mr Myers.

5 Reply submissions by MR MYERS

6 MR MYERS: My Lord, the problem with proceeding on the
7 approach it's a true bill -- I understand what my
8 learned friend means and the sense of that. But the
9 problem is the duties of the investigators certainly,
10 and the prosecution as well, is whilst doing that at the
11 same time to have a mind to alternative lines of inquiry
12 or alternative possibilities, which is why the code is
13 drafted as it is.

14 We cannot see how, for example, the explanation just
15 given gets away from the fact that if Ms Letby's
16 identity was the factor that determines what passes the
17 investigative threshold, as set out in the items
18 disclosed, how there isn't a powerful element of
19 circularity to that if what has been weighted is the
20 mere fact of her presence.

21 MR JUSTICE GOSS: Well, does that proceed then on the
22 assumption that one of the qualifying criteria for
23 further investigation is only a case in which there is
24 evidence that she was present at the time of the alleged
25 incidents or could have been responsible for the

1 collapse?

2 MR MYERS: Or the weight to be given to that, my Lord.

3 Well, what I mean is this: we don't know what this flow
4 chart or this matrix involves, but not knowing it,
5 if we imagine, for example, there's various factors. If
6 the medical evidence is given a weight of 5 and the
7 presence of the defendant is given a weight entirely
8 disproportionate to that, it may be that the mere fact
9 of her presence, rather than the strength of the
10 evidence when looked across all the various children
11 considered, is what it is it has converted, what is an
12 event that's been considered, into something that
13 appears on the indictment.

14 It seems to us, looking at the material that's been
15 disclosed, that there is some system for weighting what
16 should be proceeded with. That's certainly how it
17 appears from the material we have here. It doesn't seem
18 to us that this matrix is applied as a means of
19 selecting the event in the first place. Events have
20 been selected and then the matrix applied to them in
21 deciding whether or not to proceed with them.

22 MR JUSTICE GOSS: Can I just interrupt you there? Can

23 I just check whether that is the case?

24 MR JOHNSON: Can I make it entirely clear: this matrix has
25 not been applied to this case.

1 MR MYERS: Well, I follow that. I suppose if it is of no
2 part in this case, there's little that we can point to
3 where the matrix can have played a part in determining
4 what's on this indictment. The residual issue remains,
5 we say --

6 MR JUSTICE GOSS: In which case, arguably, it shouldn't be
7 on the disclosure schedule at all.

8 MR JOHNSON: I agree.

9 MR MYERS: Well, for that bit we don't take responsibility.

10 MR JUSTICE GOSS: Absolutely, no.

11 MR MYERS: We merely identify it.

12 MR JUSTICE GOSS: Yes, I understand. I think we all know
13 where we are and I understand why this, having been
14 disclosed as material considered by someone, the
15 disclosure officer or whoever's responsible for
16 disclosure, that it was potentially disclosable, but
17 then you, rightly, are pursuing it.

18 MR MYERS: We are. We appreciate what's been explained
19 about it, which would make it of no immediate relevance
20 to what we're dealing with here.

21 MR JUSTICE GOSS: No.

22 MR MYERS: The only matter that remains, insofar as the
23 court sees merit in it, is the point we raised under
24 paragraph 7, which is the extent to which, given the
25 total number of cases, Ms Letby is not present in any of

1 those. If there is material that can be provided
2 setting that out, we would wish to see it because then
3 at least we can gauge the extent to which this
4 investigation has looked beyond just her identity.
5 That's the only matter we are left with in the light of
6 how things have developed here.

7 MR JUSTICE GOSS: All right. Mr Johnson has said, if I've
8 understood him correctly, that there is no relevant
9 material to disclose in relation to that aspect.

10 MR JOHNSON: Correct.

11 MR JUSTICE GOSS: All right. So there we are. I will
12 provide a short written judgment in relation to this,
13 but I am not proposing to make any order in response to
14 your application, Mr Myers. But I will of course keep
15 the matter under review --

16 MR MYERS: Thank you.

17 MR JUSTICE GOSS: -- as I am obliged to do, as the
18 prosecution are, for the duration of the trial.

19 MR MYERS: We're grateful for that.

20 MR JUSTICE GOSS: It will be there and should something
21 arise that may touch upon this application, then
22 of course you are entitled, indeed duty bound, to raise
23 the matter again.

24 MR MYERS: We would, thank you, my Lord.

25

Housekeeping

MR JUSTICE GOSS: Right. Thank you very much indeed.

Just whilst we are all assembled and the defendant is present as well, first of all I take it you will -- will you want to see her --

MR MYERS: Yes, I will, my Lord.

MR JUSTICE GOSS: -- before she is taken from the building?

MR MYERS: Please.

MR JUSTICE GOSS: That will be obviously some time this morning, someone will come down. Thank you very much to the officers who are present.

Just as far as timetable is concerned, Mr Driver, thank you very much for the latest update. As I understand things, it is anticipated that essentially we will get -- I haven't brought it in with me, I could look it up on my laptop but that would waste time -- we would get close to the end, if not to the end, of the evidence relating to [Baby I] this week?

MR DRIVER: Indeed. Your Lordship will recall that

Professor Owen Arthurs is joining us on Friday to deal with several cases.

MR JUSTICE GOSS: Yes.

MR DRIVER: It is difficult to gauge with precision the length of that exercise. Therefore there is a risk of the [Baby I] chapter of evidence spilling over into

1 Monday.

2 MR JUSTICE GOSS: Well, that's why I phrased my comment in
3 the terms that I did. Of course, we never know what
4 other events may occur as sometimes unexpected and
5 unforeseen events do occur.

6 MR DRIVER: Quite. Thereafter we will move to
7 [Baby J] and then [Baby K]. We've measured,
8 estimated, the length of those cases, and they are
9 comparatively short in terms of the duration of time
10 that we require to present that evidence. We think by
11 about this time the week after we may have completed
12 both of those, the evidence in relation to both of those
13 babies.

14 MR JUSTICE GOSS: Thank you. All right. That's very
15 helpful, thank you very much indeed.

16 So in terms of the general anticipated completion of
17 the evidence relating to the individual babies, before
18 we get on to the more generic evidence that then
19 follows, we are looking at roughly where?

20 MR DRIVER: We had this discussion yesterday. Of course
21 there's an enormous element of guesswork involved, but
22 somewhere towards the end of March. Certainly we would
23 be confident of completing the evidence that related
24 directly to any of the babies, any and all of the
25 babies, before the Easter break.

1 MR JUSTICE GOSS: But not further than that?

2 MR DRIVER: Completed before the Easter break.

3 MR JUSTICE GOSS: Exactly, but not further in relation to

4 the prosecution case? I was originally -- well, earlier

5 this month it was anticipated that the jury would be in

6 a position to retire to consider their verdicts probably

7 in May.

8 MR DRIVER: Yes. We may very well reach further into the

9 prosecution case before Easter, but I wouldn't want to

10 put my name to that estimate because there's so many

11 variables. But we can foresee an acceleration in the

12 rate of progress as we go through the counts.

13 MR JUSTICE GOSS: Right. Thank you very much. Well, the

14 jury is on notice now as to when they are likely to be

15 required in terms of the period before they retire to

16 consider their verdicts in the case. Essentially, what

17 you're saying is there's no real update so far as

18 that is concerned? We certainly haven't slipped further

19 back?

20 MR DRIVER: Certainly not. At the point after we have

21 presented all the evidence in relation to the [Babies L

22 & M] twins, then we'll be very well placed to give a more

23 reliable estimate of time.

24 MR JUSTICE GOSS: That's very helpful. Thank you very much.

25 Mr Myers, any matters you want to raise?

1 MR MYERS: To assist with that, so far as the evidence not
2 relating directly to the children, but the overarching
3 evidence is concerned, it's a matter that we and the
4 prosecution are considering as we go along, both its
5 shape and its limits, because there are three aspects to
6 that. One is the police investigation, as one routinely
7 encounters in any case, albeit it's a large one, but
8 that's what one might call the police evidence and
9 we are familiar with the type of material that will
10 have: exhibits, interviews, things like that.

11 Then there is evidence in the papers from senior
12 staff at the hospital, who describe the history of this
13 matter, which comes under the overarching evidence, and
14 there is evidence from the experts, which is of a more
15 general overarching nature.

16 With regard to those two aspects of the case, this
17 is a matter still in discussion between prosecution and
18 defence, I don't go behind that, but there may well be
19 quite some limiting in evidence in court to what is
20 in the doctors' overarching statements. So when
21 your Lordship is looking at the amount of material, it
22 may well be in reality that is very much less than what
23 is in the papers.

24 Certainly at this point the position of the defence
25 is that there's a good deal of background that should

1 not feature, but I won't go beyond that because there
2 may be some disagreement as to that.

3 MR JUSTICE GOSS: I understand that.

4 MR MYERS: I know the prosecution are anxious not to go
5 beyond what is necessary.

6 With the experts and their overarching opinions, it
7 may be once we are clear as to what that will encompass
8 that we may wish to seek the assistance of the court as
9 to how far they can go in knitting together material
10 over the case as a whole and, depending upon that,
11 again, that may limit to some extent the material to be
12 dealt with in that part of the case.

13 So we agree with the prosecution as to the general
14 length of the prosecution evidence. It may well be that
15 it is realistic to anticipate we could get to the end of
16 that evidence by the Easter break in total, although we
17 understand Mr Driver's caution and we support that.

18 MR JUSTICE GOSS: There are all sorts of things between now
19 and then.

20 MR MYERS: Yes. But by far, as the court sees, the bulk of
21 the evidence is that of the children and we are looking
22 at ways of dealing with the rest of the evidence as
23 efficiently as possible.

24 MR JUSTICE GOSS: Thank you very much indeed.

25 MR JOHNSON: Can I just say one thing? Just on the question

1 of what I'll call broadly the treating consultants'
2 overarching statements, I think as between counsel we're
3 pretty much agreed as to the limits of that, but I just
4 want to make it clear that that limitation is agreed on
5 the basis that the defence doesn't head off in a certain
6 direction.

7 MR JUSTICE GOSS: Mr Myers will understand.

8 MR JOHNSON: He does, he does, but I just wanted it on the
9 record because the way that develops might open
10 a Pandora's box.

11 MR JUSTICE GOSS: Yes. I have confidence in Mr Myers --

12 MR JOHNSON: So do I.

13 MR JUSTICE GOSS: -- in him knowing exactly what the
14 consequences of certain lines may lead to.

15 MR JOHNSON: Yes.

16 MR JUSTICE GOSS: Right. Good. Well, thank you very much
17 indeed. I will be here until the usual time this
18 afternoon, but I don't anticipate I'm going to be
19 needed. I don't see that the defendant needs to be kept
20 here, apart from to see you.

21 MR MYERS: Yes, apart from to see us, my Lord, there's no
22 requirement.

23 MR JUSTICE GOSS: It's not anticipated there will be
24 a further hearing in this court today in relation to
25 this case. We will resume with the jury at 10.30

1 tomorrow morning, we hope. Thank you very much.

2 Thank you, officers, Mr Myers and others will be
3 down to see Ms Letby shortly.

4 MR MYERS: My Lord, may I just confirm one thing?

5 MR JUSTICE GOSS: Yes, please do.

6 (Pause)

7 MR MYERS: There is one matter, but I really need to discuss
8 it with my learned friend, so I won't detain
9 your Lordship immediately. I'll speak to him when
10 your Lordship rises and, if we require your Lordship's
11 assistance this morning within a short compass of time,
12 we shall let you know.

13 MR JUSTICE GOSS: Any time this morning, I think, if you can
14 deal with -- if you do need me this morning. As I say,
15 I will actually be available. I'm just thinking of the
16 defendant's position and her being kept here.

17 MR MYERS: We'll seek to deal with this issue. It's
18 a discrete issue, it's a fairly short one, but it's
19 something the defendant is anxious we deal with. I'll
20 deal with that this morning if I may but it's something
21 I do need to discuss with my learned friend before
22 discussing it with your Lordship.

23 MR JUSTICE GOSS: So be it. Thank you very much. So I'll
24 simply rise now at this stage. Let the clerk of the
25 court know as and when.

1 MR MYERS: I am grateful, my Lord. We shall.

2 MR JUSTICE GOSS: Thank you.

3 (11.37 am)

4 (The hearing adjourned until 10.30 am

5 on Wednesday, 1 February 2023)

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