

HFEA Statutory Approvals Committee

26 September 2013

Finsbury Tower, 103-105 Bunhill Row, London, EC1Y 8HF

Minutes – Item 1

Centre 0035 (Oxford Fertility Unit) – Application for Special Directions to export patient sperm to IVI Alicante, Spain

Members of the Committee:	Committee Secretary:
David Archard (lay) Chair	Lauren Crawford
Jane Dibblin (lay)	Legal Adviser:
Rebekah Dundas (lay) (Videoconference)	Stephen Hocking, DAC Beachcroft
Sue Price (professional)	Observing:
	Sam Hartley, Head of Governance and Licensing, HFEA

Declarations of Interest: members of the Committee declared that it had no conflicts of interest in relation to this item.

The following papers were considered by the Committee:

- Executive summary
- Application form
- Further information in support of the application
- Further correspondence from the centre
- Additional executive summary

The Committee also had before it

- HFEA Protocol for the Conduct of Licence Committee Meetings and Hearings
- 8th edition of the HFEA Code of Practice
- Human Fertilisation and Embryology Act 1990 (as amended)
- Decision trees for granting and renewing licences and considering requests to vary a licence (including the PGD decision tree); and
- Guidance for members of Authority and Committees on the handling of conflicts of interest approved by the Authority on 21 January 2009.
- Guidance on periods for which new or renewed licences should be granted
- Standing Orders and Instrument of Delegation
- Indicative Sanctions Guidance
- HFEA Directions 0000 – 0012

- Guide to Licensing
- Compliance and Enforcement Policy
- Policy on Publication of Authority and Committee Papers
- HFEA Pre-Implantation Diagnostic Testing (“PGD”) Explanatory Note For Licence Committee

Discussion

1. The Committee noted that this centre has applied for a special direction to export five straws of patient sperm to IVI Alicante, Avenida Denia, 11103015, Alicante, Spain.
2. The Committee noted that the HFEA Act 1990 (as amended) permits the Authority to issue directions to allow the export of gametes or embryos to countries outside the United Kingdom. Furthermore, the Committee noted that if a licensed centre meets all requirements set out by General Directions 0006, of which there are nine, export is permitted without the need for Special Directions.
3. The Committee noted that this application for Special Directions is being made because the centre is unable to export the sperm under the auspices of general directions because they are not able to meet the requirements of section (d) of schedule 2 of General Directions 0006: that ‘no money or other benefits has been given or received in respect of the supply of gametes or embryos unless the money or benefit received is in accordance with Directions 0001 (Gamete and embryo donation) or any subsequent Directions given by the Authority relating to giving and receiving money or other benefits’ and section (f) of schedule 2 of General Directions 0006: ‘the gametes or embryos are not exported if they could not lawfully be used in licensed treatment services in the United Kingdom in the manner or circumstances in which it is proposed that the gametes or embryos be used by the receiving centre.
4. The Committee noted specifically that the sperm will be used in the fertilisation of donor eggs that have been procured from an anonymous egg donor in Spain. Creating an embryo from sperm and an anonymously donated egg in the UK would not be lawful. The Committee regarded the UK requirements for identifying donors to be important. Special directions would not be granted routinely, or where the purpose or dominant effect appeared to be to circumvent those requirements. In this case the stated purpose of the export appeared to be to reduce costs of this treatment. The Committee noted that the centre made reference to waiting times in the UK, but that it had provided no evidence of UK waiting times. The Committee was not willing to give weight to UK waiting times in the absence of evidence.

5. The Committee also noted that the amount the donor has been paid is in excess of the compensation levels set out in General Directions 0001, although its concern about the anonymity of the egg donor was sufficient on its own to found its decision.
6. The Committee could not identify exceptional circumstances that would justify Special Directions. It had not been presented with any evidence that there was anything exceptional about this case. While the Committee decided this application as a single application and on the basis of the papers before it, it was mindful that there appeared to be nothing that would distinguish this case from what could be a number of other essentially identical applications.
7. The Committee had regard to Articles 8 and 12 of the European Convention on Human Rights (EHCR). The Committee understood that the rights contained in those articles were in play. It understood that any interference with those rights would have to be in pursuit of a legitimate aim, and proportionate.
8. The Committee considered that the UK's clear policy that gamete donation should not be anonymous, and that persons conceived using donated gametes should be able to receive information about their parentage was a legitimate aim. The Committee considered that the interference with rights under articles 8 and 12 inherent in refusal to grant special directions would advance that aim and was proportionate. The Committee noted that there are alternative treatment options available to the patient such as using donated eggs from another UK centre or travelling in person to Spain to produce a sperm sample at IVI Alicante. It considered the interference with rights to be relatively restricted.
9. The Committee were not satisfied that this export and treatment using an anonymous donor is in the best interest of any children that will be born.
10. The Committee were minded not to grant this application for Special Directions and therefore refused the application.

Signed:

Date: 11/10/2013

A handwritten signature in black ink, appearing to read 'DWA' followed by a stylized flourish.

David Archard (Chair)