

Human Fertilisation and Embryology Authority

Minutes of the Statutory Approvals Committee

Meeting held at Finsbury Tower, 103-105 Bunhill Row, London, EC1Y 8HF on
26 March 2015

Minutes – item 4

Centre 0006 (The Lister Fertility Clinic) – Special Directions to export sperm to Spain

| | |
|----------------------------------|--|
| Members of the Committee: | David Archard (Chair, lay) Sue Price (professional) Debbie Barber (professional) Tony Rutherford (professional) |
| Legal Adviser: | Dawn Brathwaite – Mills & Reeve |
| Members of the Executive: | Sam Hartley – Head of Governance and Licensing Trent Fisher – Secretary |

Declarations of interest: members of the committee declared that they had no conflicts of interest in relation to this item.

The following papers were considered by the committee:

- executive summary
- application form
- Special Directions further information form
- documents submitted in support of the application

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)
- guidance for members of the 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 the publication of Authority and committee papers.

Discussion

1. The committee noted that the centre has applied for Special Directions to export five vials of sperm to IVI Alicante, Spain.
2. The committee noted that the HFE 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 licenced centre meets all requirements set out by General Directions 0006, of which there are seven, 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 it is not able to meet the requirements of:
 - a. section 1(b) of schedule 2 of General Directions 0006: that the person who provided the gametes has (and, in the case of an embryo, both persons who provided the gametes from which the embryo was created, have) given and not withdrawn consent in writing to the export of gametes or embryos; and
 - b. section 1(c) of schedule 2 of general directions 0006: before giving consent, the person(s) has been given a written notice stating that the law governing the use of gametes and/or embryos and the parentage of any resulting child may not be the same in the country to which the gametes or embryos are to be exported as it is in the United Kingdom, and they have been given any further information which they may require
2. The committee noted that the Authority's policy on consent is clear and is to ensure that a person's sperm is used in a way that he would have wanted. Special directions should not be granted routinely, or where the purpose or dominant effect appeared to be to circumvent these requirements.
3. The committee noted that the patient couple had been receiving fertility treatment in the UK with the male partner's sperm being placed in storage during their treatment. In September 2014 the male partner died suddenly.
4. The committee noted that whilst undergoing treatment the male partner had signed a consent form for storage of his sperm for ten years and for the use of his sperm by his partner in the case of his death.
5. The committee noted that the patient's financial situation, which has been hampered by the sudden death of her partner, will only allow her to have one cycle

in the United Kingdom whereas if she were to continue her treatment in Spain she would be able to have up to four IVF cycles.

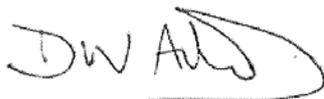
6. The committee noted that the female partner wishes to continue with the fertility treatment however due to financial impact of her partner's death she would have a higher chance of success with treatment in Spain, given the number of cycles she would be able to afford.
7. The committee noted the patient is 44 years of age and during each cycle is only producing a couple of eggs. The committee noted that if the patient was granted Special Directions she would continue her treatment using her and her late partner's gametes without the involvement of a donor.

Decision

8. The committee concluded that a refusal to issue Special Directions would interfere with the right to respect for private and family life under Article 8 of the ECHR. In particular, the committee noted the disparity of cost for IVF between Spain and the UK.
9. The committee concluded that there was clear consent given for the use of the sperm posthumously and due to the suddenness of his death the patient was unable to give consent for his sperm to be exported.
10. The committee considered the impact that the sudden death of the applicant's partner had on the applicant's finances, the fact that they were partway through treatment and the fact that this was the only chance to have a child that was biologically related to them.
11. The Committee noted that financial considerations alone do not amount to exceptional circumstances, however in this case it was the totality of the factors which made the case exceptional.
12. The committee welcomed the advice from the legal adviser who stated that the decision made in relation to this case would not create any undesirable precedent as the decision would relate to the circumstances of this case.
13. The committee agreed to grant Special Direction in this case for centre 0006 to export five vials of the partner's sperm to IVI Alicante, Spain so that the patient can continue her fertility treatment.

Signed:

Date: 7 April 2015

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

David Archard (Chair)