

## Human Fertilisation and Embryology Authority

### Minutes of the Statutory Approvals Committee

Meeting held at Finsbury Tower, 103-105 Bunhill Row, London, EC1Y 8HF on  
**30 July 2015**

#### Minutes – item 6

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

<b>Members of the Committee:</b>	David Archard (Chair, lay) Rebekah Dundas (Deputy Chair, lay) Sue Price (professional) Margaret Gilmore (lay) Bishop Lee Rayfield (lay)
<b>Legal Adviser:</b>	Jane Williams, Mills & Reeve
<b>Members of the Executive:</b>	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
- minutes of the Statutory Approvals Committee of 26 March 2015
- documents submitted in support of the application
  - price list from UK centre
  - price list from IVF Spain, Alicante
  - letter from IVF Spain, Alicante
  - medical report for Ms B
  - Ms B's letter of support

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.

## **Background**

1. On 26 March 2015 the Statutory Approvals Committee granted an application to allow the export of five vials of a deceased individual's sperm to IVF Spain, Alicante for use in the treatment of his partner, Ms B.
2. In granting the application for Special Directions on 26 March 2015 the Statutory Approvals Committee:
  - concluded that refusal of the application would be an interference with the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR). In particular, the committee noted the disparity of cost of IVF between Spain and the UK;
  - concluded that clear consent had been given for the use of the sperm posthumously but, due to the suddenness of his death, the individual had been unable to give consent for his sperm to be exported;
  - considered the impact the sudden death of her partner had had on the patient's finances, the fact that they were part way through treatment and the fact that this was the only chance for the patient to have a child that was biologically related to her and her deceased partner; and
  - 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 so that Special Directions could be issued.

## **Discussion**

3. The committee noted that centre 0006 has applied for Special Directions to export the remaining four vials of sperm to IVF Spain, Alicante.
4. The committee noted that the Human Fertilisation and Embryology 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 seven requirements set out in section 1 of Schedule 2 to General Directions 0006, export is permitted without the need for Special Directions.

5. 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 0006 because it is not able to meet the requirements of:
- section 1(b) of schedule 2 to 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 gametes or embryos being exported to the country in which the receiving centre is situated; and
  - section 1(c) of Schedule 2 to General Directions 0006: that, 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.

### **Decision**

6. The committee noted that previous cases do not set a precedent by which it is bound. The committee assesses each application for Special Directions on its own particular merits.
7. The committee also noted that, had the original application been for the export of all nine vials of sperm, this would not have affected their decision to grant the application.
8. As the current application indicated that there had been no change to the patient's situation since the first application was considered in March 2015, and as the factors which influenced the committee in reaching that decision still pertained, the committee concluded that it would be a disproportionate interference with the patient's Article 8 rights to refuse to issue Special Directions for the export of the remaining vials.
9. The committee therefore agreed to issue Special Direction in this case for centre 0006 to export the remaining four vials of the deceased's sperm to IVF Spain, Alicante so that the patient can continue her fertility treatment.

Signed:

Date: 12 August 2015

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

David Archard (Chair)