

Statutory Approvals Committee - minutes

Centre 0201 (Edinburgh Assisted Conception Unit) – application for a Special Direction to export gametes to IVI Madrid

Thursday, 24 November 2016

HFEA, 10 Spring Gardens, London, SW1A 2BU

Committee members	Margaret Gilmore (Chair) Rebekah Dundas (Deputy Chair) Anne Lampe Ruth Wilde Anthony Rutherford	
Members of the Executive	Siobhain Kelly Trent Fisher	Interim Head of Corporate Governance Secretary
Legal Adviser	Graham Miles	Blake Morgan LLP

Declarations of interest:

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

The committee had before it:

- 8th edition of the HFEA Code of Practice
- standard licensing and approvals pack for committee members

The following papers were considered by the committee:

- executive summary
- application form
- further information form
- case summary

1. Consideration of application

- 1.1. The committee noted that centre 0201 has applied for a Special Direction to export four straws of a patient's sperm to IVI Madrid, Spain for use in the treatment of the male patient's partner.
- 1.2. 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 another centre in an EEA state outside of the United Kingdom. Furthermore, the committee noted that if a licenced centre meets all requirements set out by paragraph 1 of schedule 2 to General Directions 0006, of which there are seven, export is permitted without the need for Special Directions.
- 1.3. The committee noted that this application for Special Directions is being made as the centre is unable to export the embryos under the auspices of General Directions 0006 because it is not able to meet the requirements of the following paragraphs:
 - (d) no money or other benefits has been given or received in respect of the supply of the gametes or embryos unless the money or benefits paid or 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;
 - (f) the gametes are not exported if they cannot be lawfully 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;
- 1.4. The committee noted that it is proposed that the sperm, once exported, will be used in the fertilisation of donor eggs that have been procured from an anonymous donor. In 2005 there were amendments to the law in relation to donor information access. In order to facilitate the ability of donor conceived people to have access to information on their genetic origins, treatment in the UK now requires the use of identifiable donors. Accordingly, the treatment proposed could not take place in the UK due to the use of an anonymous egg donor.
- 1.5. The committee noted that the couple have been undergoing treatment in the UK for several years, having started treatment originally at IVF Scotland (centre 0313) and then, following the closure of IVF Scotland, at Edinburgh Assisted Conception Unit (centre 0201). Further that the couple wish to access treatment as quickly as possible due to the age of the female and there is currently a waiting list of several years for treatment using donor eggs at centre 0201.
- 1.6. The committee noted that the gamete provider is unable to produce a sperm sample in Spain as he is azoospermic, the stored sperm was surgically retrieved and he is on medication which precludes further sperm retrieval.
- 1.7. The committee noted the couple have undertaken extensive research into their options in the UK and abroad and wish to undergo treatment at IVI Madrid due to the speed and quality of the service provided and the choice of donors available.
- 1.8. The committee noted that refusal of the application could be seen as interference with the applicants' rights to obtain medical treatment service abroad under EC Law and the right to respect for private and family life under the Human Rights Act 1998. The committee received legal advice that any such interference would have to be justified by reference to a pressing social need and be proportionate.

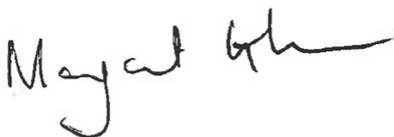
2. Decision

- 2.1. The committee agreed that Special Directions would not be granted routinely, or where the purpose or dominant effect appeared to be to circumvent those requirements set out in General Directions 0006.
- 2.2. The committee agreed that, due the condition of the male patient, the stored gametes are essential to the treatment of the couple and precluded the option of the male patient travelling to Madrid to provide a further sample.
- 2.3. The committee recognised that treatment in the UK could still take place using an identifiable egg donor, but that there is currently a waiting list of several years for treatment using donor eggs at centre 0201. Although the committee was not provided with specific information about the waiting times at other centres in the UK, the committee recognised that the couple had undertaken extensive research on the options in the UK and abroad.
- 2.4. The committee concluded that a refusal to issue Special Directions allowing the stored gametes to be exported would interfere with (a) the patients' rights under EC Law to obtain medical treatment services abroad and (b) their rights to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR).
- 2.5. In considering whether interference with those rights could be justified, the committee weighed the issues of the use of anonymous donor eggs and the fact that the donor might receive benefits in excess of those stipulated in General Direction 0001 against the interference with the patients' rights.
- 2.6. After careful consideration, the committee concluded that, taking all factors into account, refusing this application would not be a justifiable interference with those rights and/or would not be proportionate.
- 2.7. The committee concluded that the current case involves a highly exceptional set of circumstances. Accordingly, granting this application for Special Directions would not set an undesirable precedent which would undermine the imperative requirements identified.
- 2.8. The committee therefore agreed to issue a Special Direction in this case for centre 0201 to export four straws of sperm to IVI Madrid, Spain.

3. Chair's signature

- 3.1. I confirm this is a true and accurate record of the meeting.

Signature



Name

Margaret Gilmore

Date

09 December 2016