

Statutory Approvals Committee – minutes

Centre 0185 (CARE Manchester)

Special Directions application to Import Embryos from Ireland for the use in surrogacy treatment in the United Kingdom (UK)

Thursday, 30 March 2017

HFEA, 10 Spring Gardens, London, SW1A 2BU

Committee members	Margaret Gilmore (Chair) Anne Lampe Anthony Rutherford Bobbie Farsides	
Members of the Executive	Dee Knoyle Erin Barton	Secretary Governance Manager
External adviser		
Legal Adviser	Sarah Ellson	Fieldfisher
Observers		

Declarations of interest

- Members of the panel 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
- Special Directions Application Form
- Further Information form.
Personal statement from patient

1. Background

- 1.1. CARE Manchester, centre 0185 has applied for Special Directions to import four embryos from SIMS IVF clinic in Dublin, Ireland for use in surrogacy treatment in the UK.
- 1.2. The embryos were created in Ireland where the use of gametes from non-identifiable donors is permitted, using eggs from a non-identifiable Czech donor and the patient's husband's sperm. The centre has advised the Executive that the couple now need surrogacy treatment which is not available in Ireland. Therefore, the couple has requested the import of the embryos from Ireland to the UK for use in surrogacy treatment.

2. Consideration of application

- 2.1. The committee considered the application which included an executive summary, Special Directions application form, further Information form and personal statement from the couple.
- 2.2. The committee noted that the Human Fertilisation and Embryology Act 1990 (as amended) permits the Authority to issue directions to allow the import of gametes or embryos from 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 1 to General Directions 0006, import is permitted without the need for Special Directions.
- 2.3. The Legal Adviser reminded the committee that since 1 April 2005 the HFEA had required donors to be identifiable to enable donor conceived children potentially to have access to information about their gamete donor. This reflected recognition of the rights (under Article 8 of the ECHR) of children born from IVF to information in respect of their genetic identity. This was background to the context of the requirements in the General Directions in this case.
- 2.4. The Legal Adviser also suggested that the committee should exercise caution in relation to the patient statement "surrogacy is not legal in the Republic of Ireland" and the centre's statement "[surrogacy] is not permitted in Ireland". The committee did not consider it needed to adjourn for specialist Irish law advice but accepted the Legal Adviser's clarification that surrogacy arrangements do appear to be possible in Ireland but there is a real absence of legislation which has caused concern to those who might be involved in such cases. The Legal Adviser had not been able to identify the requirement to have a licence from the Irish Medical Council.
- 2.5. The committee noted that the Authority has placed importance on the principles of known donation. The HFEA has a statutory duty to uphold the scheme and uphold compliance with the Act.
- 2.6. The Court of Appeal, in considering the Blood case set out a list of tests that the Authority would need to meet in considering an application asking the Authority to overrule the provisions of General Directions 0006.
- 2.7. The principle tests have been applied to this particular application.

Principle 1

- 2.8. The committee noted that the centre is unable to import the embryos under General Directions 0006 because requirements of part 1(b) of Schedule 1 cannot be met:
 - b) the person who provided the gametes is (and in the case of an embryo, both persons who provided the gametes from which the embryo was created are) identifiable.

The clinic correctly identified that

Principle 2

- 2.9.** The committee considered whether a refusal amounts to an interference with the individual's right to obtain medical treatment services abroad.
- a) The committee noted that the couple wish to import their embryos for use in surrogacy treatment in a UK centre.
 - b) The committee noted that the embryos have been created with the patient's husband's sperm.

Principle 3

- 2.10.** The committee considered whether a refusal would be an interference with the individual's rights under the Human Rights Act 1998, for example; the right to marry and found a family (under Article 12); the right to respect for private and family life (under Article 8); the right not to be discriminated against because of age (under Article 14).
- 2.11.** The committee noted the patient's personal statement describing how this impacts her and her husband's right to found a family.

Principle 4

- 2.12.** The committee considered whether non-compliance with the requirements constitutes adequate justification to refuse the application because of a pressing social need to ensure adherence to the requirements, and that that social need is pressing enough to justify interference with the patient couple's human rights.

Principle 5

- 2.13.** The committee considered whether the interference in this case is proportionate. The committee noted that the embryos to be imported are essential to the treatment using a surrogate as they are created with the patient's husband's sperm.

3. Decision

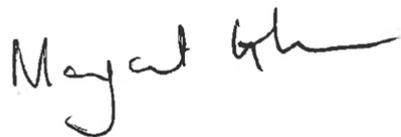
- 3.1.** The committee considered the patient's unforeseen medical complications, limited options and the difficulties experienced seeking treatment involving surrogacy in Ireland. The committee accepted that, regardless of the precise legal situation, none of the clinics the couple had contacted in Ireland were prepared to transfer to a surrogate and also noted that the identified surrogate was in any event unable to travel from the UK to Ireland for treatment.
- 3.2.** The committee considered the patient's personal statement and understood that the couple understandably sought to have the existing embryos, created with the patient's husband's sperm used, rather than embarking again on the creation of fresh embryos with an identifiable egg donor. The committee accepted that the particular embryos were essential to the medical treatment services being sought.
- 3.3.** After careful consideration, taking all factors into account, the committee weighed the issue of the anonymous egg donor against the significant interference to the couple's EU rights to treatment and rights under the Human Rights Act. The committee concluded that a refusal to issue Special Directions in this case would be disproportionate and interfere with the following rights under the Human Rights Act 1998:
- right to respect for private and family life (under Article 8);
 - right to marry and found a family (under Article 12);
- 3.4.** The committee did not consider that in this particular case the requirements around identifiable donors and the associated social need adequately justified interference in these rights.

- 3.5.** The committee agreed to issue Special Directions in this case for CARE Manchester, centre 0185 to import four embryos from SIMS IVF clinic in Dublin, Ireland to the UK for use in surrogacy treatment.
- 3.6.** The committee concluded that the current case involves a highly exceptional set of circumstances. Accordingly, granting this application for Special Directions would not set any precedent and was not intended to undermine the important requirements of Schedule 1 to General Directions 0006..
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4. Chair's signature

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

Signature

A handwritten signature in black ink, appearing to read "Margaret Gilmore". The signature is written in a cursive style with a long horizontal flourish at the end.

Name

Margaret Gilmore

Date

30 March 2017