

Statutory Approvals Committee – minutes

Item 6

Centre 0100 (Bourn Hall Clinic)

Special Directions application to export embryos to Republic of Ireland
for patient couple's own use

Thursday, 29 November 2018

HFEA, 10 Spring Gardens, London, SW1A 2BU

Committee members	Margaret Gilmore (Chair) Bobbie Farsides (Deputy Chair) Anne Lampe Anthony Rutherford Ruth Wilde Emma Cave
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Members of the Executive	Dee Knoyle Catherine Burwood Paula Robinson Victoria Askew	Committee Secretary Senior Governance Manager (Observer) Head of Planning and Governance (Observer) Inspections & Logistics Officer (Observer)
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Specialist Adviser

Legal Adviser	Ros Foster	Browne Jacobson LLP
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Observers	Rachel Cutting (New Member Induction - Observer)
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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
- General Directions 0001 (2015)
- General Directions 0006 (2018)
- General Directions 0013 (2018)
- HFEA Standing Orders (2018)
- Special Directions Decision Tree (2018)

The following papers were considered by the committee:

- Executive Summary (including personal patient statement)
- Special Directions Application Form
- Further information form
- Letter from proposed receiving centre confirming willingness to accept embryos

1. Background

- 1.1. The Person Responsible (PR) at Centre 0100 (the applicant) has applied for Special Directions to export six embryos to SIMS clinic in Dublin, Republic of Ireland.
- 1.2. The patients' journey to assisted fertility began after a difficult encounter with advanced Hodgkins Lymphoma and chemotherapy treatment some years ago. The patient is currently in good health without the need for medication. The embryos were created with the couple's own gametes and stored for their future use in treatment. The storage period for the embryos expires on 15 April 2019.
- 1.3. The patient couple have been married for many years and are both childless. The patient couple was treated at University College Hospital London and Bourn Hall in Cambridge in the past and treatment was unsuccessful. In September 2018 the patient couple requested transfer of the remaining embryos to SIMS clinic in Dublin for one final attempt before reaching a cut off age and claim that the timely transfer of embryos is essential for implantation. The request was accepted by centre 0100, however the remaining term of the storage period for the embryos is less than 6 months from the date on which they are to be exported and the centre is unable to complete the documentation required to extend the storage period before the expiry of the deadline to export the embryos.
- 1.4. The patient couple both hold Irish passports and have a home in Ireland. Their family and economic ties are there and they wish to be treated in Dublin. The patient couple expressed that it would be unacceptable to both their religious beliefs to allow their stored embryos to perish at the end of the current storage period at centre 0100.
- 1.5. The centre is unable to complete the transaction under the auspices of General Direction 0006 because the following requirement is not satisfied:

Part 1

Schedule 2 – Export of gametes and embryos to Gibraltar and the European Economic Area (EEA)

(g) the remaining term of the relevant storage period for the gametes or embryos, as provided for in section 15 (3) or (4) or by Regulations made under section 15 (5) of the Human Fertilisation and Embryology Act 1990 as amended, and the period for which the gametes and embryos may remain in storage in accordance with the consent(s) of the relevant gamete provider(s), are not less than 6 months from the date on which they are to be exported

2. Consideration of application

Application

- 2.1. The committee noted that the PR at centre 0100 has applied for Special Directions to export six embryos to Dublin, Republic of Ireland. The committee received a suitably completed application form and further information form.

Human Fertilisation and Embryology Act 1990 (as amended) Section 24

General Directions 0006

- 2.2. The committee noted that Section 24(4) of the 1990 Act provides a power to make Directions and confers a broad power on the Authority to permit the export of a patient couple's gametes. Pursuant to this power the Authority has issued General Direction 0006 ('the General Direction'). However, this application has arisen because the requirement of the General Direction listed below cannot be met and therefore the committee is asked to consider whether, in the particular circumstances of this case, there are grounds to exercise the power under Section 24(4) to permit the transaction applied for.

Part 1

Schedule 2 – Export of gametes and embryos to Gibraltar and the European Economic Area (EEA)

- (h) the remaining term of the relevant storage period for the gametes or embryos, as provided for in section 15 (3) or (4) or by Regulations made under section 15 (5) of the Human Fertilisation and Embryology Act 1990 as amended, and the period for which the gametes and embryos may remain in storage in accordance with the consent(s) of the relevant gamete provider(s), are not less than 6 months from the date on which they are to be exported*

Storage of embryos – Expiry date is less than 6 months from the date on which they are to be exported.

- 2.3. The storage period for the embryos expires on 15 April 2019. The remaining term of the storage period for the embryos is less than 6 months from the date on which they are to be exported.
- 2.4. Centre 0100 is unable to complete the documentation to extend the storage period before the expiry of the deadline by which the embryos must be exported.

3. Decision

- 3.1. The committee had regard to:

- HFEA General Directions 0006
- The Human Rights Act 1998:
- Article 8 - respect for private and family life
- Article 12 - right to marry and found a family

- 3.2. The committee had regard to the Authority's statutory duty to promote, in relation to activities governed by the Act, compliance with requirements imposed by or under the Act.

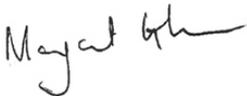
- 3.3. The committee had regard to the principles (tests) derived from the decision of the Court of Appeal in the Blood case and from rights arising under the Human Rights Act 1998. The committee considered whether a refusal to make Special Directions for the export of embryos to the Republic of Ireland would amount to an interference with the patients' rights under Articles 8 and/or 12 of the European Convention on Human Rights and whether such interference would be justified and proportionate. The committee also considered whether a refusal would amount to the couple's right to obtain medical treatment anywhere in the EU.

- 3.4. The committee agreed that the refusal of this application would amount to an interference with the patient couple's rights to obtain medical treatment anywhere in the EU and under Articles 8 and/or 12 of the European Convention on Human Rights and that such interference was unjustified and disproportionate. The committee noted that the couple are childless and due to illness had sought fertility treatment. The embryos to which the application related were created with the couple's own gametes and stored for their future use in treatment. The patient is currently in good health and wishes to transfer the remaining embryos to SIMS clinic in Dublin for one final attempt at fertility treatment before reaching a cut off age and the timely transfer of these embryos is essential for implantation. The patients have chosen to have their treatment at SIMS clinic in Dublin, Republic of Ireland. The patient couple also have a home in Ireland where they have family and economic ties. The committee noted that the couple appeared to have been unaware of the relevant deadlines and requirements, and that if the application were refused, the embryos would have to be allowed to perish (as they could not lawfully be stored) and as such the couple would be deprived of those embryos and a final chance to found a family.
- 3.5. The committee also noted that the patient couple had expressed that it would be unacceptable to both their religious beliefs to allow their stored embryos to perish at the end of the storage period at centre 0100.
- 3.6. The committee concluded that, taking all relevant factors into account, the current case involved an exceptional set of circumstances that were sufficient to justify a departure from the relevant requirement of General Direction 0006 and as such approved this application for Special Directions to export the patient couple's embryos to SIMS clinic in Dublin, Republic of Ireland, for their own use.
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4. Chairs signature

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

Signature



Name

Margaret Gilmore

Date

19 December 2018