

Statutory Approvals Committee – minutes

Centre 0199 (CARE London)

Special Direction application to export embryos to the USA for use in surrogacy

Thursday, 28 November 2019

HFEA, Spey Meeting Room 10 Spring Gardens, London, SW1A 2BU

Committee members	Margaret Gilmore (Chair) Anne Lampe Ruth Wilde Tony Rutherford	
Members of the Executive	Moya Berry Catherine Burwood	Committee Secretary Licensing Manager
Legal Adviser	Eve Piffaretti	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:

- 9th 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 Update

Part 1 (documents previously considered by the committee in September 2019 and minutes)

- Executive Update
- Executive Summary

- Application Form redacted
- Email confirming destination address of the receiving centre
- A further ‘information form’
- Email from the receiving centre confirming willingness to receive embryos (redacted)
- The minutes of the Statutory Approvals Committee – 29 September 2019 which originally considered the application

Part 2 (further submissions)

- Personal Statement of the patient couple
- Letter of support from the solicitor
- Email from the PR to confirm the number of embryos to be exported

1. Background

- 1.1.** The Person Responsible (PR) at Centre 0199 (the applicant) has re-applied for a Special Direction for the export of ten embryos from CARE London to San Diego Fertility Center, San Diego, California, United States of America (USA).
- 1.2.** The committee noted that at its meeting on the 26 September 2019, it had decided to adjourn the decision on whether to grant a Special Direction for the export of embryos to the United States of America, pending further information providing full details and supporting evidence of any exceptional circumstances which may justify a special direction being granted. The committee requested details and evidence of efforts made, and over what time period, to identify a suitable surrogate in the United Kingdom. Information has now been provided by the centre to address the points raised by the committee and an updated application has been submitted.
- 1.3.** The committee noted the typographical error in the original application form, which originally stated that there are five embryos to be exported. The Person Responsible has since confirmed that there ten embryos to be exported.
- 1.4.** The patient couple have ten embryos in storage at CARE London. The intended parents (a male same sex couple) wish to export their embryos to California for a commercial surrogacy arrangement as they have been unable to source a suitable surrogate in the United Kingdom since 2018, despite a number of attempts.
- 1.5.** The committee noted commercial surrogacy is permitted in the United States and is well established in California where there are more women who are willing to embark on a surrogacy treatment.
- 1.6.** The committee noted that the embryos, which have been created with sperm from each of the male partners, were placed in storage in April 2019, and their consented storage period ends in April 2029.
- 1.7.** The committee noted that the egg donor, who is a family friend, is fully aware of the couple’s intention to seek treatment abroad and has given her full consent to the embryos being exported to the United States.

2. Consideration of application

Application

- 2.1.** The committee considered the application, which included an executive summary, a Special Direction application form and Further Information form.
- 2.2.** The committee noted its initial decision in September 2019 to adjourn the application to grant a Special Direction pending further information.

- 2.3.** The committee noted that the Human Fertilisation and Embryology Act (as amended) permits the Authority to issue directions to allow exports of gametes or embryos to countries outside of the United Kingdom. Furthermore, the committee noted that in relation to the import and export of gametes and embryos outside of the European Economic Area and Gibraltar, movement can be permitted without the need for a Special Direction if the conditions outlined in General Directions 0006 are satisfied.
- 2.4.** The committee noted that this application for a Special Direction is being made as the centre is unable to export the embryos to San Diego Fertility Centre, under General Directions 0006, since the following requirements of Schedule 4 are not met:
- (h) the gametes or embryos cannot be exported if they could not lawfully be 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.
- 2.5.** The committee noted the information that had been provided to support the Special Direction application. This included an email from San Diego Fertility Centre, to accept ten embryos for the purpose of establishing a pregnancy intended to produce offspring.
- 2.6.** In considering the application, the committee had regard to the principles (tests) derived from the decision of the Court of Appeal in *R v HFEA ex parte Blood* [1997] 2 All ER 687 and from rights arising under the Human Rights Act 1998.

2.7. Principle 1

The committee recognised that the centre is unable to export the gametes under General Direction 0006 for three potential reasons that the exported embryos could not be used in the manner /circumstances in the UK in which it is proposed by the patients at the receiving centre in the USA:

1. The embryos may be used in commercial surrogacy arrangement
2. Any child born as a result of a treatment with these embryos, may not be able to access information about their egg donor at the age of 18 years
3. A potential surrogate may or may not be the legal parent and have the right to keep the child

The Committee noted that, except for section 1(h) of Schedule 1, all other requirements of General Directions 0006 were satisfied.

2.8. Principle 2

The committee considered whether a refusal would amount to an interference with the patient's rights under the EC Treaty to obtain medical treatment services in another member state. The committee noted that the patient's wishes to export embryos to a centre outside of the EU.

2.9. Principle 3

The committee recognised that rights under the European Convention on Human Rights (ECHR) are separate and distinct from those arising under the EC Treaty. The committee noted that since 2017, the couple's intention had been to find a suitable surrogate in the UK, but due to the small number of surrogates in the UK and other personal commitments to family, this had not been possible. The committee accepted that a refusal to allow the embryos to be exported could amount to an interference with the patient's rights to respect her private and family life under Article 8 and to found a family under Article 12 of the ECHR and that a refusal to grant the application would need to be justified.

2.10. Principles 4 and 5

The committee considered whether interference with the patient's rights under the ECHR could be justified and whether a refusal to grant the application would be disproportionate. The committee noted that the embryos have been created from the gametes of both patients. The committee also considered the effect of a refusal on the patient and whether this represented an isolated case or an undesirable precedent.

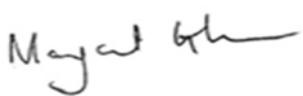
3. Decision

- 3.1.** The committee was very grateful for the submission of the substantive evidence which set out the exceptional circumstances of the couple, and the significant efforts made in their pursuit to identify a suitable surrogate in the United Kingdom since 2018. This included the couple becoming members of Surrogacy UK and communicating with members on their on-line forum boards, attending a surrogacy information day, and finding a potential surrogate who sadly was not able to proceed with the arrangement due to medical complications.
- 3.2.** Taking all of the additional evidence into account, the committee concluded that a refusal could not be justified and/or would amount to a disproportionate interference with the rights of the patient. The committee was also satisfied that granting the application in the exceptional circumstances of this case would not set an undesirable precedent.
- 3.3.** The committee, therefore, agreed to issue a Special Direction in the case for Centre 0327, to export from CARE London., Park Lorne 111 Park Road , London , NW8 7JL United Kingdom to San Diego Fertility Center, 11425 El Camino Real, San Diego California 92130, United States of America, ten embryos for storage prior to treatment by a patient couple.
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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

24 December 2019