

Statutory Approvals Committee – minutes

Centre 0185 (CARE Manchester)

Special Direction application to export eggs to Beacon CARE Fertility Dublin, Republic of Ireland, for cryostorage.

Thursday, 12 December 2019

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

Committee members	Margaret Gilmore (Chair) Anne Lampe Emma Cave Ruth Wilde	
Members of the Executive	Moya Berry Catherine Burwood	Committee Officer Licensing Manager
Legal Adviser	Sarah Ellson	FieldFisher - LLP
Observers	Souhaila Cherkaoui	Inspections and Logistics Officer (Induction)

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 Summary
 - Special Directions Application Form for the export of frozen eggs to Beacon CARE Fertility, Dublin, Ireland (redacted)
 - Further information form
 - Letter from the proposed receiving centre confirming acceptance of gametes
 - Patient Statement
-

1. Background

- 1.1.** The Person Responsible (PR) at Centre 0185 (the applicant) has applied for a Special Direction for the export of a patient's twelve frozen eggs from CARE Manchester, United Kingdom (UK) to Beacon CARE Fertility Dublin, Republic of Ireland, for cryostorage. The patient's twelve eggs were originally placed into storage in October 2009.
- 1.2.** Unfortunately, due to a number of personal circumstances, the patient has not had the opportunity or been able to find a suitable partner with whom she could start a family. The patient has expressed a wish to use her own eggs in future treatment once she has found a suitable partner. The patient is aware of the option to use a sperm donor to start a family but would prefer that any future child had a father in their life.
- 1.3.** The patient currently is not considered to be prematurely infertile and therefore a Medical Practitioner Statement (MPS) could not be signed within the relevant period which would have enabled storage to be extended. Therefore, the patient is not eligible to store her eggs beyond 10 years under UK law.
-

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 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 to Gibraltar and the European Economic Area (EEA), movement can be permitted without the need for a Special Direction if the conditions outlined in General Directions 0006 are satisfied.
- 2.3.** The committee noted that this application for a Special Direction is being made as the centre is unable to export the twelve frozen eggs to Beacon CARE Fertility Dublin, under General Directions 0006, since the following requirements of section (f) and (g) of Schedule 2 of General Directions 0006 cannot be met:
- (f) The gametes or embryos 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
- and
- (g) the remaining term of the relevant storage period for the gametes or embryos, as provided for in section 14 (3) or (4) or by Regulations made under section 15 (5) of the HFE Act 1990 amended, and the period for which the gametes and embryos may remain stored 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.

2.4. The committee noted the information that had been provided to support the Special Direction application. This included a letter from Beacon CARE Fertility Dublin, which confirms that they are willing to accept the twelve frozen eggs into cryostorage.

2.5. 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.

2.6. Principle 1

The committee recognised the centre is unable to export the frozen eggs under General Direction 0006 because treatment in the UK would not be lawful given that the statutory storage period has lapsed and the clinic has not been able to satisfy the requirements of the 2009 Regulations in order for storage to lawfully be extended beyond the statutory period of ten years.

In addition, given that the statutory storage period expired on the 24 October 2019, the centre is unable to comply with the requirement that the period for which the gametes remain stored in accordance with the consent of the relevant gamete provider, is not less than six months from the date on which they are to be exported.

2.7. 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 acknowledged that the proposed transfer was to a country within the EU where the applicant could in the future seek treatment services. The frozen eggs would be essential for her to have treatment to enable her to have a genetically related child.

2.8. 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. Based on the patient's particular personal circumstances, the committee accepted that a refusal to allow her frozen eggs to be exported would 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 any refusal to grant the application would need to be justified.

2.9. Principle 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. In doing so, the committee had regard to the patient's particular circumstances. The committee 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 took into consideration the fact that the patient, due to her personal circumstances, had not had sufficient opportunity or time to find a suitable partner following the placement of her eggs into cryostorage in October 2009.

3.2. Despite the legal provisions that impose a 10 year limit on the length of time gametes and embryos can usually be stored in the UK, having regard to the patient's particular circumstances and her express wish to use her own eggs in future treatment with a suitable partner, 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 particular case would not set an undesirable precedent.

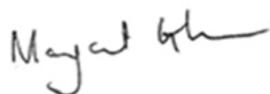
3.3. The committee therefore agreed to issue a special direction in the case of CARE Manchester, 108-112 Daisy Bank Road, Victoria Park, Manchester M14 5QH United Kingdom (UK) to export twelve

frozen eggs to Beacon CARE Fertility Dublin, Beacon Court, Sandyford, Dublin 18 Republic of Ireland for cryostorage.

. 4. Chairs 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", written on a white background.

Name

Margaret Gilmore

Date

6 January 2020