

Statutory Approvals Committee – minutes

Centre 0094 (Barts Health Centre for Reproductive Medicine)

Special Direction application to export sperm to NewLife IVF, Greece

Thursday, 27 February 2020

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

Committee members	Margaret Gilmore (Chair) Emma Cave Anne Lampe Tony Rutherford Ruth Wilde	
Members of the Executive	Moya Berry Catherine Burwood	Committee Officer Licensing Manager
Legal Adviser	Tom Rider	FieldFisher - LLP
Observer	Emily Tiemann (Induction)	Policy Officer

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
 - Further information form
 - Letter from the proposed receiving centre
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1. Background

- 1.1.** The Person Responsible (PR) at Centre 0094 (the applicant) has applied for a Special Direction for the export of six ampoules of sperm from Barts Health Centre for Reproductive Medicine, United Kingdom (UK) to NewLife IVF, Greece.
- 1.2.** The male partner has six ampoules of sperm in storage at Barts Health Centre for Reproductive Medicine and wishes to export his sperm to Greece for fertility treatment using donor eggs.
- 1.3.** The committee noted the male partner is now azoospermic and his partner requires egg donation. The couple have investigated potential treatment options, including treatment in the UK, but have determined that their best option for success is to receive treatment at NewLife IVF in Greece.
- 1.4.** The patient's sperm were originally placed into storage in November 2017 and the consent storage period ends in November 2027.
- 1.5.** The committee noted the patient couple have had regular sessions with a counsellor to discuss the implications of using donor eggs and have given considerable thought to both this treatment option and whether to have treatment here in the UK or overseas. The intention is for them to continue to see their BICA counsellor throughout their treatment.
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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 six ampoules of frozen sperm to NewLife IVF in Greece, under General Directions 0006, since the following requirements of paragraph 1(f) of schedule 2 are not 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.
- 2.4.** The committee noted the information that had been provided to support the Special Direction application. This included a letter from NewLife IVF, which confirms that they are willing to accept the six ampoules of sperm for use in treatment.

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 sperm under General Direction 0006 because treatment in the UK would not be lawful given that the egg donor would be non-identifiable. The committee considered the right of donor conceived children to obtain identifying information about the donor once they are 18.

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 receive treatment services.

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 husband's frozen sperm 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

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 unique combination of factors leading to this application and the emotional and personal needs of the patient couple. The couple have stored sperm available for use and are keen for this to be exported for use in treatment outside the UK. The committee noted the male partner is now azoospermic and if the stored sperm could not be exported, he would require a surgical sperm retrieval operation to provide sperm on the day of the insemination of the donor eggs.

3.2. The committee also acknowledged the difficult decision the couple had made to stop using their own eggs and to use donor eggs to provide them with the best opportunity to achieve a viable pregnancy. The committee noted the time and commitment taken by the couple to identify a potential clinic in the UK that could provide them with donor eggs, but respected the couple's decision that the best option now open to them, is to seek treatment outside of the UK.

3.3. The committee noted that the couple have received regular counselling throughout the decision-making process and will continue to receive regular counselling sessions with a BICA counsellor whilst undergoing treatment abroad. This gave the committee some reassurance that the couple would have had the opportunity to discuss the implications of using an anonymous donor, for any child that may be born from anonymous donor eggs in the future.

3.4. Taking all of these particular circumstances into account, the committee considered both the needs of a future child to have an identifiable donor and the right of the patient to seek treatment appropriate

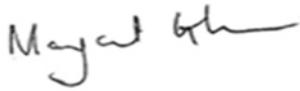
to her own unique circumstance and concluded that a refusal could not be justified and/or would amount to a disproportionate interference with the rights of the patient. The committee was also satisfied that granting the application in the exceptional circumstances of this particular case would not set an undesirable precedent.

- 3.5.** The committee therefore agreed to issue a special direction in the case of Barts Health Centre for Reproductive Medicine, Barts and the London NHS Trust, 2nd Floor, Kenton and Lucas Wing, St Bartholomew's Hospital, Little Britain, London, EC1A 7BE, United Kingdom (UK) to export six ampoules of sperm to NewLife IVF, 171 Ethnikis Anistaseos Str. 551 34 Kalamaria Thessaloniki Hellas, Greece for use in treatment.
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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

17 March 2020