

# Statutory Approvals Committee – minutes

## Centre 0075 (London Women’s Clinic, Darlington)

### Special Direction application to import embryos from Pivet Medical Centre, Australia for patient’s own use.

Thursday, 29 October 2020

HFEA, 10 Spring Gardens, London, SW1A 2BU via Teams Meeting



Committee members	Margaret Gilmore (Chair) Anne Lampe Tony Rutherford Ruth Wilde	
Members of the Executive	Moya Berry Catherine Burwood	Committee Officer Licensing Manager
Legal Adviser	Eve Piffaretti	Blake Morgan - LLP
Observer	Bernice Ash Jane Darragh	Committee Officer Research Manager (Induction)

## Declarations of interest

- Members of the committee declared that they had no conflicts of interest in relation to this item.

## Apologies:

- Apologies were received from Emma Cave

## The committee had before it:

- 9th 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 Direction Application Form
- Further Information Form

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## 1. Background

- 1.1.** The Person Responsible (PR) at London Women's Clinic, Darlington, United Kingdom (UK) has applied for a Special Direction to import three embryos from Pivet Medical Centre, Australia, for storage and use in treatment for a patient couple at the London Women's Clinic, Darlington, UK. The patient couple have now relocated to the UK and wish to continue their treatment in the UK.
- 1.2.** The three embryos to be imported were created using sperm surgically retrieved from the male partner.
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## 2. Consideration of application

- 2.1.** The committee considered the application, which included an executive summary, a Special Direction application form, and a Further Information form.
- 2.2.** The committee noted that the Human Fertilisation and Embryology Act 1990 (as amended) permits the Authority to issue directions to allow imports of gametes or embryos from countries outside of the United Kingdom. Furthermore, the committee noted that, in relation to the import of gametes and embryos from countries outside of Gibraltar and the European Economic Area (EEA), this can be permitted without the need for a Special Direction if the conditions outlined in General Direction 0006 are satisfied.
- 2.3.** The committee noted that this application for a Special Direction is being made as the centre is unable to import the embryos from Pivet Medical Centre under General Direction 0006, because the following requirements of Schedule 3, paragraph 3, are not met:
- (j) the gametes or embryos to be imported meet the UK requirements on screening in accordance with the Authority's standard licence conditions and the Code of Practice currently in force.
- 2.4.** The committee noted the information that had been provided to support the Special Direction application.
- 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 that the centre is unable to import the embryos, for use in the patient couple's treatment, under General Direction 0006 because the following requirements cannot be complied with:
- (j) the gametes or embryos to be imported meet the UK requirements on screening in accordance with the Authority's standard licence conditions and the Code of Practice currently in force
- 2.7.** The committee observed that, except for those cited at paragraph 3 (j) of Schedule 3, the other relevant requirements of General Direction 0006 were satisfied.
- 2.8.** The committee were advised that the embryos had been created using the frozen sperm from the male partner. The committee noted that the sperm blood screen did not meet the UK regulations as this had been carried out more than three months prior to the sperm being frozen. However, the supplying centre has confirmed in writing that all other requirements have been complied with and the receiving centre has agreed to adhere to the non-compliant condition.

## 2.9. Principle 2

The committee acknowledged the patient couple wishes to import the embryos from a country outside of the EEA and considered whether a refusal would amount to an interference with the patient's rights.

## 2.10. Principles 3

The committee recognised that rights under the European Convention on Human Rights (ECHR) are separate and distinct from those arising under the Treaty on the Functioning of the European Union. Based on all of the patient couple's circumstances, the committee accepted that a refusal to allow the embryos to be imported would amount to an interference with the patient couple's rights to respect for their 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 and proportionate.

## 2.11. Principles 4 and 5

The committee considered whether interference with the patient couple'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 patients' particular circumstances. The committee considered the effect of a refusal on the couple and whether their situation was likely to constitute an isolated example or whether granting the application would set an undesirable precedent.

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## 3. Decision

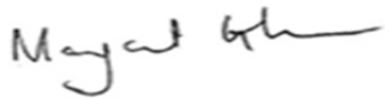
- 3.1. The committee took into consideration the patient couple's change in life circumstances, noting that the couple had undergone fertility treatment in Australia using the male partner's surgically retrieved sperm to create the embryos.
- 3.2. The committee noted the frozen embryos are essential to the couple's further fertility treatment, and as the couple have now relocated to the UK, they would have to travel back to Australia for treatment, which would add both financial and emotional cost to them. In addition, the committee were cognizant of the fact that any travel abroad is now not a practical option given government advice to avoid non-essential travel due to the Covid-19 pandemic.
- 3.3. With regard to the screening, the committee felt it was important to remind the centre that screening must be conducted ahead of treatment, and if required, appropriate procedures and subsequent actions are carried out in accordance with the HFEA Code of Practice.
- 3.4. Taking all of these circumstances 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 patients. The committee was satisfied that granting the application in the exceptional circumstances of this case would not set an undesirable precedent to import three embryos for use in treatment, from Pivet Medical Centre, 166-168 Cambridge St, Leederville, WA 6007, Australia to London Women's Clinic, Darlington, Woodlands Hospital, Morton Park, Darlington, Durham, DL1 4PL, United Kingdom.

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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 that reads "Margaret Gilmore". The signature is written in a cursive style with a long horizontal flourish at the end.

**Name**

Margaret Gilmore

**Date**

16 November 2020