

Statutory Approvals Committee - minutes

Centre 0100 (Bourn Hall Clinic)

Special Direction application to import embryos from Canada

Date:	25 February 2021
Venue:	HFEA, 2 nd Floor, 2 Redman Place, London E20 1JQ via Microsoft Teams
Committee Members:	Margaret Gilmore (Chair) Emma Cave Anne Lampe Ruth Wilde
Legal Adviser:	Sarah Ellson - FieldFisher LLP
Members of the Executive:	Moya Berry - Committee officer Catherine Burwood – Licensing Manager
Observers:	Sarah Steadman - Inspector (Induction) Karen Campbell - Inspector (Induction)
Apologies:	No apologies were received for the meeting
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:

- HFEA Code of Practice 9th edition
- Standard Licencing and Approvals Pack
- General Direction 0001 (2015)
- General Direction 0006 (2020)
- General Direction 0013 (2018)
- HFEA Standing Orders
- Special Direction Decision Tree - Import Export - for use 31 Dec-30 June - GB -

The following papers were considered by the committee:

- Executive Summary
 - Redacted application form
 - Further Information form
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1. Background

- 1.1. The person responsible (PR) at Centre 0100, Bourn Hall Clinic, (the applicant) has applied for a Special Direction for the import of three frozen embryos from the Olive Fertility Centre, Vancouver, Canada to Bourn Hall Clinic, United Kingdom (UK).
- 1.2. The committee noted the three frozen embryos had been created with donated eggs and the male patient's sperm.
- 1.3. The committee noted, that while residing in Canada, the patient couple have previously had successful treatment with embryos created using the eggs from the same donor and the partner's sperm, resulting in one child.
- 1.4. The committee noted the couple now live in the UK and wish to have further treatment to complete their family with a full genetic sibling for their first child.
- 1.5. The committee noted that if the embryos could not be imported, the couple would have to begin the process of finding a suitable egg donor in the UK and would be unable to create a full genetic sibling to their existing child.

2. Consideration of the 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 (as amended) permits the Authority to issue directions to allow import and export of gametes or embryos from/to countries outside of the UK. Furthermore, the committee noted that in relation to the import and export of gametes and embryos outside of Great Britain (GB), 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 import the three frozen embryos from Canada under General Directions 0006 (GB) (version 8), since the following requirements of Schedule 2 of General Directions 0006 cannot be met:
 - (e) the person who provided the gametes is (and, in the case of an embryo, both persons who provided the gametes from which the embryo was created, are) identifiable.
- 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 its decision tree and 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 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:

 - (e) the person who provided the gametes is (and, in the case of an embryo, both persons who provided the gametes from which the embryo was created, are) identifiable.

- 2.7.** The committee observed that, except for those cited at paragraph 3 (e) of Schedule 2, the other relevant requirements of the General Direction 0006 were satisfied.
- 2.8.** The committee noted that the embryos to be imported were created with donor eggs and sperm from the male patient. The committee noted that the egg donor will remain fully anonymous to the couple and any resultant offspring, as donors in Canada are non identifiable.
- 2.9. Principle 2**
The committee noted the patient couple wishes to import the embryos from a country outside of GB and considered whether a refusal would amount to an interference with the patients' rights.
- 2.10. Principle 3**
The committee recognised that rights under the European Convention on Human Rights (ECHR) are separate and distinct from those arising under the United Kingdom's previous membership of the European Union. Based on the patient couple's particular circumstances, the committee accepted that a refusal to allow their embryos to be imported would amount to an interference with their rights to a 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. Principle 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 patient couple's 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.

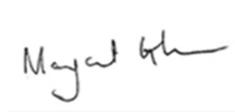
3. Decision

- 3.1.** The committee took into consideration that the embryos had been created using donor eggs and the patient couple's sperm. The committee noted that the couple already has one child born using embryos created from this egg donor and partner sperm, and now wishes to have a full genetic sibling for their child. The committee noted that if the embryos could not be imported the couple would have to begin the process of finding a suitable egg donor in the UK and any subsequent children born would not be a full genetic sibling for their first child.
- 3.2.** Taking all 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 patient couple. 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 to import three embryos for use in treatment, from Olive Fertility Centre, Suite 300, East Tower, 555 West 12th Avenue, Vancouver, BC, V5Z 3X7 Canada to Bourn Hall Clinic, Bourn Hall, Bourn, Cambridge, CB23 2TN, UK.

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, appearing to read "Margaret Gilmore", enclosed in a thin black rectangular border.

Name

Margaret Gilmore

Date

17 March 2021