

Statutory Approvals Committee - minutes

Centre 0004 (Ninewells Hospital)

Special Direction application to import embryos from Greece

Date:	25 March 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:	Tom Rider
Members of the Executive:	Moya Berry - Committee officer Catherine Burwood - Licensing Manager
Observer:	Jason Kasraie - Authority Member (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 Licensing 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
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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 0004, Ninewells Hospital, (the applicant) has applied for a Special Direction for the import of four frozen embryos from New Life IVF, Greece to Ninewells Hospital, Dundee, Scotland, United Kingdom (UK).
- 1.2. The committee noted the four frozen embryos had been created using donated eggs and the male patient's sperm.
- 1.3. The committee noted the couple live in the UK, but as set out in the application, due to the ongoing Covid-19 pandemic and the current ban on international travel from Scotland, the couple now wish to transfer their frozen embryos to the UK to continue their fertility treatment.

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 four frozen embryos from Greece under General Directions 0006 (GB) (version 8), since the following requirements of Schedule 1 of General Directions 0006 (GB) cannot be met:
 - (b) 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:

 - (b) 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 1 (b) of Schedule 1, the other relevant requirements of the General Direction 0006 (GB) 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 Greece are non identifiable.
- 2.9. **Principle 2**

This principle is not applicable.

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 UK'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 recognised the need for it to have had regard to the patient couple's particular circumstances and that this includes the committee considering 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.

3.2. After very careful deliberation the committee decided that in order for the application to be progressed, it would require further details of the circumstances of the couple, which may justify a special direction being granted. This includes details and evidence of:

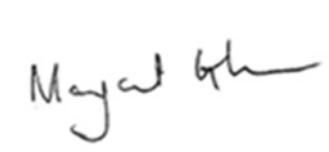
- The particular circumstances for the couple initially seeking IVF treatment in Greece and whether attempts had been made to find a suitable egg donor in the UK.
- The reasons for the couple not travelling to Greece for their treatment, as current Scottish Government COVID-19 restrictions appear to allow travel abroad for medical treatment.
- Why the embryos were not used in November 2020 when they were created and when the couple were in Greece, or whether some embryos had been used but unsuccessfully.
- The impact of delaying any treatment until such a time that travel overseas is more accessible, (Approximately 6 months' time).

3.3. Therefore, having carefully considered the application and taking all these circumstances into account, the committee concluded that the application should be adjourned pending the provision of further information regarding this special direction to import four embryos for use in treatment, from New Life IVF Greece, Eth. Antistaseos 171, Kalamaria 551 34, Greece to Ninewells Hospital, Assisted Conception Unit, Ward 35, Ninewells Hospital, Dundee, DD1 9SY, Scotland 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

16 April 2021