

**THE APPEALS COMMITTEE OF THE HUMAN FERTILISATION AND
EMBRYOLOGY AUTHORITY**

HODGE MALEK KC (Chairman)

IN THE MATTER OF:

iTRUST FERTILITY (CENTRES 0015 & 0086)

Appellant

- and -

**THE HUMAN FERTILISATION AND EMBRYOLOGY
AUTHORITY**

Respondent

RULING ON ADMISSIBILITY

UPON HEARING Jenni Richards KC as leading Counsel for the Appellant and Ravi Mehta as Counsel for the Respondent in a Hearing on 22 March 2023,

AND UPON the Appellant seeking permission to rely upon a second witness statement from Mrs Kuljit Moore-Juneja, dated 21 March 2023, filed and served out of time,

AND UPON the Respondent seeking permission to rely upon a witness statement from Ms Rachel Cutting, dated 22 March 2023, filed and served out of time,

THE CHAIR OF THE APPEALS COMMITTEE RULES AS FOLLOWS:

1. I have before me two applications. One on behalf of the Centre 0015 and Centre 0086 (“the Centres”) and the other on behalf of the Human Fertilisation and Embryology Authority (“the Authority”) Authority to adduce additional evidence for the purposes of the appeals to the Appeals Committee against two decisions of the Licence

Committee to suspend their licences taken on 26 January 2023 and 1 February 2023 and notified to the Centres on 13 February 2023 (“the Decisions”). Following the filing of the appeals of the Centres on 27 February 2023, the matter initially came before me at the CMC on 9 March 2023. At the CMC I gave various directions as to the service of evidence and directed at the request of the applicants that the matter should proceed to a substantive oral hearing on an expedited basis fixed for 22 March 2023. One of those directions was that each party were to file their witness evidence by specific dates. The two witness statements that the parties wish to now adduce fall outside of the order that I made at the CMC in that they were filed out of time and neither party sought permission to adduce further witness statements prior to serving them. Rule 21 (1) of the Human Fertilisation and Embryology (Appeals) Regulations 2009 (“the Appeals Regulations”) provide that all questions of admissibility of evidence and law before the Appeals Committee shall be decided by the Chair. As the admissibility of witness statements is a legal and evidential question, I determine the applications to adduce further evidence alone prior to the other two members of the Appeals Committee being given sight of the statements.

2. The second witness statement of Mrs Moore-Juneja who is the LH in this matter is dated 21 March 2023 and was served yesterday afternoon. That provides an update on various steps and the position since the original decisions of 26 January 2023 and 1 February 2023 respectively in respect of Centre 0015 and Centre 0086. The other statement for which permission to adduce is sought by the Authority is the witness statement of Ms Rachel Cutting dated 22 March 2023 which is today. She is the director of compliance and information at the Authority and that statement deals with a complaint that the Authority received from one of the patients on 20 March 2023. That complaint at the moment is anonymous at least so far as the Centres are concerned.
3. In summary, Counsel for the Authority did not oppose the admission of the second witness statement of the LH, so long as the Authority had the opportunity to respond to it at the substantive hearing, and that the Authority was permitted to adduce the further witness statement on the recent complaint. Counsel for the Centres opposed the admission of the witness statement dealing with the complaint as it was filed late

and there was no opportunity to respond to it, not simply because of the fact it had been served shortly prior to the substantive hearing, but given that the complaint was anonymous it had yet to be investigated by the Centres. She also said that the statement was prejudicial even if it was ultimately decided to give no weight to it.

4. In deciding these applications to have the suspensions revoked, it is the responsibility of the Appeals Committee to form its own view as to whether or not suspension is appropriate. In this case, we are unlikely to reach a decision that depends on the standard or burden of proof. Mr Mehta has already disavowed any reliance on Rule 23 (1) of the Appeal Regulations that it is for the Centres to show that the Decisions should be overturned. In those circumstances, the Appeals Committee will want to consider the updated position to decide whether or not as from today, there should be a suspension and if so, for how long. In those circumstances, it is appropriate the Appeals Committee should all the material that is available and which the parties wish to adduce, even if that material is untested.
5. As regards the second witness statement from Mrs Moore-Juneja, it does contain information which would be relevant for the determination of this Appeals Committee today. It is important that the Authority is given the opportunity to respond to the points there and that is going to be dealt with by the way that we deal with the final issue for today, which is whether or not there should be a suspension. The Appeals Committee has already indicated to the parties that it would wish to go through each area of concern one by one and hear from both the Centres and the Authority. At that point, the Authority will have the opportunity to respond to any points in this witness statement.
6. The statement of Rachel Cutting is different in the sense that what it relates to is a complaint that has just been made, on 20 March 2023 which is only two days ago. The complaint has yet to be investigated by the Authority. The Centres and particularly the LH and the PR are unaware of the complainant. It is only once the procedure outlined in paragraph 13 of the statement has been followed that the matter will then go back for engagement with the relevant centre.

7. Jenni Richards KC as counsel for the Centres argues that this statement should not be before the Appeals Committee at all and that it should have no weight at all in any event. She submits that it is unfair for the Appeals Committee to take into account an anonymous complaint. The points made by Ms Richards KC would be good if we were going to accept the underlying allegations in the complaint as being true. But we are not being asked to proceed on that basis by the Authority. What the Authority is saying is that there is a matter that requires further investigation and no more. They are not asking us to take it into account for the basis of the truth of the underlying allegations. Further, the Appeals Committee is sufficiently experienced to understand what weight one can place on a complaint like this which has been untested and that the Centres have a very limited opportunity to respond to it.

8. I have decided that it is appropriate for this statement to be admitted but only for the limited purpose that has been indicated and that the weight that will be given to the statement as to the truth of what is being alleged and as to the relevance for the ultimate decision that we have to reach is somewhat limited. So it is a document that is going to come in, but I am very aware that the weight to that document is something that could be the subject of further submissions this afternoon.

HODGE MALEK KC
Chair of the Appeals Committee
22 March 2023