

NUFFIELD COUNCIL ON BIOETHICS

Response to the Competition and Market Authority's draft guidance for fertility clinics on consumer law

January 2021

Background

We welcome the Competition and Markets Authority's (CMA) draft guidance for fertility clinics on consumer law, and feel that this is much needed. We have responded below to sections of the guidance, drawing on our work on [egg freezing in the UK](#)¹ and [experimental treatments](#).²

Patient vulnerability

Egg freezing

Most UK women who freeze their eggs for 'social' reasons (not medical purposes) are single, university-educated, and in professional employment. The average age of a woman seeking social egg freezing in the UK is 38, but it is well-established that broadly, the chances for a live birth are higher for eggs frozen before a woman is 35.³

Small scale UK studies on motivations for social egg freezing suggest that a lack of a committed partner is a common reason for freezing eggs. Women may also want to achieve financial stability, or avoid self-blame for not having their eggs frozen. They may mourn not being able to pursue motherhood in a way considered 'the norm', and can feel isolated and stigmatised if they do not have a partner. The simultaneous commercialisation and medicalisation of social egg freezing can affect women's motivations, either by giving women false hope about future chances, or by suggesting that women have a responsibility to 'fix' the 'problem' of reproductive ageing.

From what we know about the experiences of women who undergo social egg freezing, it can be a physically unpleasant procedure - in particular, the requirement for daily hormone injections which can affect mood. There are also psychological risks, such as distress if the procedure does not work. Regulators and clinics need to ensure that enough information about the procedure and process, in addition to

¹ Nuffield Council on Bioethics (2020) Egg freezing in the UK.

² Nuffield Council on Bioethics (2018) Patient access to experimental treatments.

³ HFEA (20 December 2018) Press release: Age is the key factor for egg freezing success says new HFEA report, as overall treatment numbers remain low. Available at: <https://www.hfea.gov.uk/about-us/news-and-press-releases/2018-news-and-press-releases/press-release-age-is-the-key-factor-for-egg-freezing-success-says-new-hfea-report-as-overall-treatment-numbers-remain-low/>

success rates (see next section), is being provided for women to make an informed choice about freezing their eggs.

Fertility treatments

Within the private fertility treatment sector, patients are increasingly offered ‘add-ons’ alongside their main fertility treatment with the aim of improving the chance of a successful pregnancy. There are strong incentives for patients to consider add-ons to maximise their chance of conceiving, given the cost and emotional and physical stress of fertility treatment. Patients may feel under pressure to ensure they have tried everything. Power dynamics may be significant, and patients might be strongly persuaded by the opinion of the healthcare professional or feel unable to question their judgment.

Ensuring that potential and existing patients get the information they need to make informed decisions

Egg freezing

There are limited data on pregnancies and live births from egg freezing because of its relative newness as a fertility treatment and because very few women who freeze their eggs go back to use them (for example, in 2016, 39 babies were born to women who used their thawed eggs in treatment). The data that are available shows that there is a small chance of women becoming pregnant (1 in 5). An ethical approach to providing information to women as they make choices is as much about saying what is unknown as it is about saying what is known. In both respects, it is important that any difficulties that women encounter in navigating the data are eased by presenting available data clearly, accessibly, and transparently.

Available data on how women feel about social egg freezing suggests they feel frustrated with insufficient information on success rates to inform their decision. Clinics have been criticised for not providing easy access to the limited data that are available, leading women to turn to the media for information instead.

The importance of easy access to clear data is not just something that is ‘nice to know’; rather, it goes to the heart of women being able to be fully informed about their decisions to have an invasive, and expensive, procedure.

Fertility treatment

Within the private fertility treatment sector, add-ons typically cost between £50 and £8,000. There is limited evidence to support their use. Over 70% of fertility clinics in the UK offer add-ons which have been rated by the Human Fertilisation and Embryology Authority as having insufficient or no evidence to show that they are effective and safe. A recent study found that some clinics in the UK provide misleading or inconsistent information about the available evidence for add-ons,

such as their providing their own recommendations alongside the HFEA traffic light system.⁴

Stage 1 – Research (marketing)

Some clinics' advertising lacks clarity on success rates, costs, and risks, which can be misleading and confusing for women who are researching social egg freezing. While the advertising in the sector is currently being examined by the Advertising Standards Authority, it is important that women are presented with clear and transparent information about social egg freezing at this stage in order to make informed decisions about whether to continue researching fertility treatment, what clinics to shortlist, and other matters.

Concerns have been expressed about the trivialisation of social egg freezing in media coverage, along with social media influencers' promotion of social egg freezing, and the use of algorithms that target women with social egg freezing adverts. Some clinics have been criticised for irresponsible marketing strategies, such as events where social egg freezing is discussed over prosecco. Research suggests women can feel pressure to freeze their eggs to avoid blaming themselves later. It is important that marketing strategies consider such research so that women's anxieties are not exploited or they are not given false hope about what egg freezing might be able to achieve.

Our main concern is how egg freezing is being marketed as a lifestyle choice, promoted on social media and through other marketing streams, which trivialises what is a complicated and expensive medical procedure.

The law requires women to receive "such information as is proper" before egg freezing. It is also recommended that clinics inform women of (age-specific) success rate including centre-specific expertise and live birth rates. However, women report difficulties in navigating these data. If women are to make informed choices, they need clinics to be frank about what is known and unknown about egg freezing.

Contact

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⁴ See, for example: <https://www.leedsfertilityclinic.co.uk/services-treatments/fertility-assistance/treatment-add-ons-at-leeds-fertility/>