Recruitment and counselling of sperm donors: ethical problems

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The recruitment and counselling of sperm donors raise several ethical issues. The word ‘donation’ implies no payment and informed consent for donation is essential in respecting the autonomy of the giving party. This implies looking into the motivation of donors and, when accepted, information about the screening and its results. It is a sensitive issue, especially when pathology is uncovered in someone who has not asked to be screened for his own immediate benefit. Counselling may result in a refusal to take part by the prospective donor, and selection by the recruiter; the main problem being the ethical basis of the selection process. Other elements may also lead to a clash of interests between the donor, the recipients and even the prospective child, particularly in the field of anonymity and information giving about the specific circumstances of use of the donation. Implication and support counselling are essential tools in achieving an acceptable balance.

Key words: consent/counselling/donor insemination/ethics/recruitment

Introduction

Donor insemination is a well established procedure in cases of untreatable azoospermia, which has been regulated and submitted to standard practice and guidelines in several, but not all, European countries over a varying period of years. For instance, in France, the Centre pour l’Étude et la Conservation des Oeufs et du Sperme (CECOS) has its own code of practice, to which statutory requirements have recently been added by the new French Bioethics laws (July 1994). In the UK, the Human Fertilisation and Embryology Authority (HFEA), regulates licensed clinics by Statute (Human Fertilisation and Embryology Act, 1990), and sets standards for the recruitment and counselling of gamete donors in its Code of Practice. Certainly much thought has been given, on both sides of the Atlantic, to the ethical issues pertaining to gamete donation even if they are not always codified (American Fertility Society (AFS) ethical guidelines, 1994).

This paper concentrates on the ethical dilemmas encountered in recruiting and counselling sperm donors, although we note that there are even greater difficulties in obtaining oocytes in sufficient number for potential recipients, which may lead to inflated payments, such as for instance, in the USA.

Questions of principle

Principles almost universally regarded as worthy of respect, such as autonomy, consent and altruistic donation are either enshrined in legislation with diverging emphasis in different European countries, or are the subject of conventions, such as the Convention of the Council of Europe (1996).

The problem of payment of donors has recently led experienced practitioners to voice their discomfort (Sauer, 1996) and to assert that the dignity (or respect of the person in the spirit of the recommendations of the Council of Europe) of the donor (Ahuja and Simons, 1996) was essential to the ethically acceptable continuation of the practice. This is of course a deontological argument, a ‘question of principle’, similar to the altruism...
preferred by several practitioners (Shenfield and Steele, 1995; Davies, 1996). Altruism has been branded by many as too idealistic, and doomed not only to failure in itself but also failing our patients (a failure of duty of care) by leading to a decrease in the size of the donor pool. The latter could be called a utilitarian market argument, which one hopes will be shown to be sensitive to a good public information campaign about the needs of infertile couples, and the fostering of solidarity among the fertile.

This leads us to say a few words about payment of donors in general: at the risk of repeating a simplistic statement, it should be emphasized that the word 'donation' implies an altruistic act and precludes payment in its definition (Shenfield and Steele, 1995). In such circumstances, the utilitarian argument often put forward is that few donors would volunteer without a cash incentive, thus worsening the already scarce supply. This is a perennial problem in all types of donation from gametes to organs, and has been thoroughly analysed in the context of blood donation. Several negative consequences were identified by Titmuss (1971) in this context, centring around three main points: (i) the discouragement of voluntary supply; (ii) the increased risk of transmitting disease by donors motivated by gain only and willing to falsify information; and (iii) potential exploitation of the weakest socio-economic groups of society (a point highlighted again by Rodriguez del Pozo, 1994). Arguably, the last argument is the strongest as appropriate campaigns for recruiting voluntary donors would take care of the first obstacle, and the screening imposed by several legislatures (Lois Bioéthique, décret d’application; HFEA, 1995) of the second.

It is too idealistic to have a firm belief in altruism? A study of the attitudes to sperm donation in parents of young children revealed the discrepancy between information on the need to donate and action (Purdie et al., 1994). Nevertheless, it is possible that young (enough) fathers might be recruited at a later stage when parents are able to have a little more time both for themselves, and for society at large, when their children are a few years older.

However, it must be stressed that, although recruitment of donors is necessarily the key to the availability of gamete donation, counselling, at all levels, is such an intrinsic part of the process that it is difficult to separate the two whilst trying to ascertain the problems encountered during the different steps entailed before actual acceptance of a volunteer in a sperm donation programme.

Nevertheless, we will attempt to separate the main ethical issues pertaining to recruitment and counselling of sperm donors in that order.

Questions of practice I: ethical problems of recruitment

The caring team has duties (of care, respect of confidentiality and autonomy) to the recipients, which reflect the traditional doctor/patient relationship. The notion that the same duties are also owed to the donor, without whom treatment would not be possible, has only been raised more recently (Daniels, 1993). A few studies have actually sampled the views of the donors. In a study of 55 potential semen donors in three in-vitro fertilization (IVF) units, 82% did not mind providing non-identifying information and 69% did not expect any financial reward (Lui et al., 1995). Another small study compared the donor recruitment of semen donors in two clinics, one a National Health Service (NHS) centre where donors were not paid, the other a non-profit making charitable centre where the donors received a small sum for expenses. Unsurprisingly, those recruited in the former setting were not motivated by gain (Daniels et al., 1996a,b).

Practically, though, methods of recruitment have to be selected. Publicity or the help of recipients may be useful tools, each with different ethical implications. After initially starting recruitment via infertile couples and staff, CECOS now communicates directly by means of posters, aimed mostly at teachers’ common rooms, and adverts in reputable newspapers (such as Le Monde). The recent modification of French legislation (1994) forbids ‘advertising’ for any donation purpose (organs, tissues, gametes), and there is controversy in France over the difference between ‘informing’ the public of the need for donors and ‘advertising’. Recently, one of the regional CECOS centres was threatened with closure because there had been an article
concerning its practice, and the need to recruit donors, in the local press. Since 1994, it now falls to the Ministry for Health to mount and implement recruiting campaigns, but up till now, the problem of gamete donation has not been tackled. The main problem in 1995–1996, however, was a direct consequence of a 'décret d’application' concerning the exclusion of cytomegalovirus (CMV) positive donors, which led to a sizeable decrease in the pool of useable donors (Le Lannon et al., 1998); this has recently been reversed.

In the UK, several units advertise and, until the recent plans of the HFEA to implement a ban on payment for the allowed £15 per donation plus expenses, there have been a few instances of enticing prospective donors by inflated (although moderately so) 'expenses'. This problem of payment has already been discussed above. In contrast, when it is customary not to pay donors, as in France, <10% of donors claim their travel expenses.

Another concern relates to subtle means of coercion: how much pressure should be put onto both recipient couples and prospective donors by asking them to recruit amongst family and friends who may feel beholden to help when they are not actually keen to do so? Those recruited may thus ignore some of the key issues pertaining to gamete donation, especially the significance of perpetuating one's genes, anonymously or not, in a different context to one's own procreation.

Once the prospective donors have been reached, information preceding the giving of their informed consent is the next concern. What questions should be answered, or information volunteered, in order to fulfil the legitimate expectations of prospective donors who present themselves voluntarily? They will undergo tests when screened and can expect to know the results. The need for counselling with regard to screening for human immunodeficiency virus (HIV) and hepatitis has been often discussed, but there are further matters which need also great care when revealed, e.g. 'quality' in terms of semen analysis is an important factor of selection in order to enhance the chances of pregnancy in the recipients; in social terms, this may be translated as preferred presumed paternity, as in France.

The risk of detecting suboptimal sperm parameters must be explained to prospective donors who have not had their fertility tested. Furthermore, a caring society might arguably undertake to help the donors, whether accepted or not, when they want to reproduce later on, should they face any problem. This would seem a just reward for their intentional solidarity towards other members of the society. One of the most complex problems would be, for example, the discovery of severe oligozoospermia with the implications of possible genetic anomaly underlying the problem, and the need for future reproduction using intracytoplasmic sperm injection (ICSI) and for genetic counselling about cystic fibrosis (Patrizio, 1995). But, however difficult the implications for the intermediaries who recruit the donors, it would be a breach of their autonomy not to allow the donor access to the results of all screening tests, with the necessary support this entailed.

Finally, donors' motivation is a difficult subject to analyse, and cannot always be equated simply with an act of solidarity easily fostered by information. Even when a fee is offered, a study of 20 candidates for semen donation showed that intimate motivation of a psycho-affective kind, in the realm of reparation for the death of a partner, the impression of being an unwanted child, the feeling of a debt owed to life, was behind the apparent monetary incentive customary in their centre. These were similar findings to those observed in unpaid donors, hence the conclusion that (moderate) payment and altruism served the same function as a shield for more profound reasons (Laruelle and Englert, 1989).

Questions of practice II: Ethical problems of counselling

Three distinct types of counselling have been delineated (King's Fund Report, 1991): implication counselling, support counselling and therapeutic counselling. The HFEA Code of Practice, for instance, details circumstances in which any one type of counselling should be offered to the donors. There are many relevant issues to our concern of ethical problems in gamete donation, which mainly relate to information about the personal, familial, professional and social implications of the act of donation, whilst support counselling may be
necessary, especially when unsuspected problems are unearthed during the screening process. Who is selected and accepted for donation is also a major ethical consideration, as it may raise the problem of subtle discrimination.

**Ethical basis for refusing donors**

This may be done on simple grounds (semen analysis not 'good enough'), but may be also due to more subjective criteria. A donor may be judged to be too 'psychologically' fragile or unreliable to give consistently and without prejudice to his vision of his own procreation at a later stage. This applies especially if he is not recruited after presumption of paternity as is the case in Belgium and the UK for instance, whilst 'fathers' are preferred in France. This practice, however, uncovers another difficult problem, which is the consent of the spouse or partner: if this is mandatory, this implies a kind of exclusivity of procreative rights in such couples, which may not reflect the late 20th century social structure of the family.

However, to return to the donors themselves, which of their interests deserves the most consideration? Other issues, which involve recipients and prospective children as much as donors, have been the subject of debate, whether academic or involving policy making or practice, and are an essential component of the implication counselling of the donors. One of the most hotly debated is that of the child's 'right to know' his/her origins (Shenfield and Steele, 1997).

**Ethical problems in satisfying the information needs and specific requests of the donors**

A study of the recruitment of donors in Sheffield showed that the proportion of volunteers decreases with the different steps of recruitment, including counselling (Chauhan et al., 1988). It is interesting to note that this proportion of 'lost potential donors' was actually less in the CECOS system where they are recruited amongst putative fathers (Le Lannou et al., 1998), who are also better informed about paternity in general. Yet there may be limits to the amount of other information the intermediaries would be happy to give to the donors. This may relate to the recipient(s): information, as, for instance, which recipients are being treated (couples, married or not, single women, partners of HIV-positive men). Or, even more complex, the matter of a disability in the ensuing child, especially if there is a possible genetic component, in spite of the screening which is performed before taking on the donors. This raises the problem of informing someone who has probably given long ago, and who might feel that further contact is an infringement of his privacy. Genetic screening has been the subject of a whole report in the UK (Nuffield Council on Bioethics Report, 1993), and the difficult area of the partaking of unwanted or unwelcome information, with the possibility of breaking confidentiality to other members of the family, discussed at length. It is very difficult to envisage this without prior consent of the donor involved, and ideally this should be broached at the stage of donation. The HFEA requirements are summarized in a form with several questions for the donor to complete. One might thus include another question asking whether the donor would desire further contact in the case of relevant information to his health becoming available, however slim the chance.

Another complex area of importance to all parties, donors and recipients, relates to the donor insemination (DI) procedure or other use of their spermatozoa (as in research or IVF). Here two opposite attitudes are possible: firstly, that these matters are not of direct interest to the sperm donor and the separation principle described by Polkinghorne (1989) in the fetal material donation consultation document may apply. This argued that, in the case of aborted material from terminations of pregnancy being used for research, consent for the latter should be obtained independently to the procedure of counselling and consent for the termination of pregnancy itself from the pregnant woman. But it could also be argued that, in English law, practitioners have the right of a conscience objection to participating in any of the licensed treatments under the Human Fertilisation and Embryology Act, and that not to give the same privilege to gamete donors would be unfair (i.e. research or ‘treatment’ according to the Act). According to some legal authorities, it may not be possible, either for the practitioner (nor by analogy for the donor), to stipulate which type of recipient
may benefit from their donation. For instance, exclusion of single women or lesbian couples might be considered without the remit of the conscience clause of the Human Fertilisation and Embryology Act and discriminatory (Kennedy and Grubb, 1995). Another kind of selection, less directly relevant to the donor but involving the information which has to be given him as to his acceptance or refusal, or acceptance in particular circumstances, has been branded as 'discriminatory' (J. Harris, personal communication). This relates to the matching process involved between phenotype of donor and recipient couple. Even more extreme, is the exclusion of some polyfactorial diseases with a genetic component e.g. asthma, if they are present in the recipient couple. This is the practice of CECOS, and has been called 'eugenics' and criticized (Testart, 1995).

Finally, the confidentiality, important to both donor and recipient in their relationship via the carer, epitomizes the clash of duty the intermediary may experience when also considering the infertile couple and prospective offspring. Swedish donors are now named to their genetic offspring, whilst not actually engaging any parental responsibility, but it is not yet certain how the law will be applied at the 'maturity' of the children. It must be stressed that awareness is a prerequisite of motivation, and that donors who accept these conditions seem to be older, generally they are already fathers and, most importantly, have entered into the contract of donation with full knowledge of the consequences (Daniels and Lalos, 1996). Any approach other than total transparency on this matter would be an infringement of the donor's basic autonomy.

The issue of the extent of the possibility of limits set by the donors, however, must be aired, and a final question asked: should we evolve an ethical code dealing with all the aspects mentioned above or select those of critical practical and legal importance (essentially criteria related to safety and consent)?

In fact, to speak in terms of duties towards and legitimate expectations of all parties rather than of rights of both donors and recipients (whether the 'right to know' or to information of any kind) has less potential for an incompatibility difficult to resolve. A working compromise based, as far as possible, on available evidence of outcome of policies, becomes more attainable.

Conclusion: a template for guidelines
From the potential donors' point of view, two main points are evident when they are counselled for recruitment: firstly, they will be screened and, secondly, their gift will be used for a specific purpose, the creation of a potential child, or research: (i) as regards screening, there is a wealth of guidelines already: for instance, the Nuffield report on genetic screening (1993) concludes that consent to screening implies potential information, if desired, concerning the findings discovered during the process, with the provision of counselling if appropriate and necessary. It is simple to apply the same principles to screening for sperm donation, where the interest of the donor is first and foremost at stake (as his donation will not be used if below safety and quality standards); (ii) as regards the use of gametes, and its purpose, however, there are no guidelines concerning information of the donors. How 'informed' should consent be is already a classical ethical (and legal) question. In gamete donation, there is a potential conflict of interests with the recipients, and, it has been also argued, with the intermediaries, particularly in the field of anonymity (Haimes, 1993). This problem is made even more arduous because it involves issues of privacy, both a private and public policy matter, and the welfare of the potential child.

In summary, there is, at European level, a wide consensus about the essence of donation, whether articulated around the notion of respect for the human body and its products, or solidarity in social terms (i.e. values, or ideals which are considered enhancements to society). Whatever the difficulties in recruitment, a gift should not be paid for. This principle also forms part of the recent Council of Europe (1996) Bioethics Convention.

If a gift is altruistic, does it need any other compensation, as in the realm of information? On balance, personal information (i.e. regarding one's results) seems a just compensation if desired, but information involving other parties (i.e. regarding the recipients or potential children apart from their number to allay any fear of later incest) does not seem warranted. This would mean setting limits
to the use of gametes, begs the arduous task of defining the limits allowed by the donor, and indeed who is justifiably able to impose normative values, although a conscience clause (i.e. for research), allowed in the Human Fertilisation and Embryology Act, could still be invoked.

A simpler approach, though, is for openness in the recruitment policies, whether at local (Pennings, 1995) or national level. This would allow the ultimate informed choice of the gamete donors, to give or not to give.

References