

From: Dr Louise Strong  
Director – Consumer Protection

December 2022

Dear Sir/ Madam,

**Complying with UK consumer law**

1. We are writing to fertility clinics based outside the UK that advertise their services to UK based consumers to draw to their attention, and other clinics in their groups, the work of the UK Competition and Markets Authority (CMA) in the fertility sector and the action they need to take.
2. The CMA is the UK's primary competition and consumer authority and has powers to tackle practices and market conditions that disadvantage consumers and hinder their decision making. As part of its role, the CMA produces guidance for businesses on their consumer law obligations and to promote compliance.

Consumer law guidance

3. In June 2021 the CMA published consumer law guidance for fertility clinics. This guidance is to help fertility clinics understand and comply with their existing obligations under UK consumer law. A copy of the guidance can be found on the CMA's webpages [here](#).<sup>1</sup>

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<sup>1</sup> Fertility treatment: A guide for Clinics - GOV.UK ([www.gov.uk](http://www.gov.uk))

4. All providers of fertility treatment, including those based outside of the UK, are expected to comply with UK consumer law in so far as their activities are directed at consumers in the UK.
5. This means, for example, that if you are marketing your services to patients based in the UK you will need to ensure that your marketing complies with UK consumer law, even if any of the treatment itself takes place overseas. Marketing of your services to UK patients includes, for example:
  - a. participating in a trade show taking place in the UK
  - b. engaging in a UK social media campaign
  - c. using a website that is directed at UK consumers to advertise your services
6. To ensure that they are complying with UK consumer law, clinics based overseas should read the CMA's consumer law guidance and make any necessary changes to their marketing materials and practices.
7. In particular, clinics must ensure that they provide prospective and existing patients with clear, accurate, and easily accessible information to enable them to make properly informed decisions, at the right stage of their patient journey. This includes information about the cost of treatment, clinic success rates, and the risks and clinical evidence for any treatment add-ons offered.
8. Furthermore, UK consumer law may apply to contracts you enter into with UK patients, even if the contract specifies a different law. This means that consumers continue to benefit from the mandatory protections of Part 1 of the Consumer Rights Act 2015, and all your clinic's terms and conditions are potentially subject to the test of fairness under Part 2 of the Consumer Rights Act 2015.
9. The mandatory protections include an obligation to carry out your services with reasonable care and skill. Fairness of contractual terms means that your terms should be user friendly, clear and unambiguous, as well as substantively fair (for example, you should not try to exclude consumers' rights under UK law). If you are not sure which country's laws apply to your contracts with UK patients, you should seek legal advice.

#### Compliance review

10. In September 2022, the CMA published findings from a review of fertility clinics' compliance with UK consumer law. Although the compliance review primarily considered UK based clinics, we also reviewed the websites of a small number of

overseas clinics to identify and review what information they provide to prospective UK patients researching treatment overseas.

11. We identified some concerns during our compliance review that are relevant to overseas clinics carrying out business in the UK. These include:

- a. concerns with the transparency of clinics' price information for patients when they are researching and comparing clinics. For example, advertising a headline price for a cycle of IVF but not clearly explaining which treatments and services are included or excluded from it.
- b. clinics advertising success rate claims, including superiority claims, without clearly identifying the basis of the claims. For example, by
  - i. failing to clearly explain what measures had been used to calculate the success rates, such as whether the rate was based on per cycle started, per embryo transfer or per embryo transferred, or what time-period the claim covered.
  - ii. focusing on the success rates of particular groups of patients, such as those patients undergoing IVF that had also purchased PGT-A or those patients undergoing IVF with donor eggs, without explaining how many of the clinics' patients this related to.
  - iii. making superiority claims such as "above international standards" without referring to any supporting evidence or referring to evidence that does not support the claim.
- c. clinics failing to provide information about the evidence for, or risks associated with, certain treatment add-ons (optional treatments, tests, or procedures) when advertising such treatments.
- d. clinics making claims that link success rates to the use of certain treatment add-ons without any, or adequate, explanation of the basis on which the claims were made.

#### What action do you need to take?

12. To ensure you comply with UK consumer law in your dealings with UK consumers, you should read the CMA's [guidance](#) for fertility clinics in conjunction with the CMA's compliance review [findings report](#)<sup>2</sup> and, where relevant, make any necessary changes to your marketing materials as soon as possible.

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<sup>2</sup> [Findings report \(publishing.service.gov.uk\)](#)

13. Failure to comply with UK consumer law in your dealings with UK consumers could result in the CMA or others, taking enforcement action.

14. If you are unsure of your consumer law obligations, you should consider seeking legal advice.

Yours faithfully

Louise Strong

*Director – Consumer Protection*