

Couple harvested the sperm of their dead son to create a designer grandchild

From **Caroline Graham**
IN SAN DIEGO

A WEALTHY British couple have created a 'designer grandson' using sperm from their dead son.

The couple took the extraordinary decision to harvest the sperm after their son – their only child – was killed in a motorcycle crash.

Bypassing strict UK laws, the sperm was frozen and exported to the US where the couple, who are in their 50s, chose to use gender selection techniques to create a new male heir, who was born using donor eggs and a surrogate.

The boy is now three and is understood to be living in the UK with his grandparents.

It is believed to be the first case of its kind in the UK – and is certain to raise huge ethical

'A criminal act has probably taken place'

concerns. Even the doctor involved – world-leading fertility specialist, Dr David Smotrich – has admitted the case was highly unusual.

Dr Smotrich says he helped the couple at his pioneering La Jolla IVF clinic in California.

Astonishingly, he said he understood the couple's son – who was unmarried – had not given formal consent to the extraction and use of his sperm in the event of his death.

Legal experts have confirmed that this means those involved in the UK may have committed a criminal act and could face prosecution.

Last night, Dr Smotrich said: 'The English couple lost their son under the most tragic of circumstances. They desperately wanted an heir and a

THE CASE THAT RULED THERE MUST BE CONSENT...

DIANE Blood, right, made history in 1997 by winning a two-year legal fight to have children using her dead husband's sperm. Liam, now 19, and Joel, 16, were born after father Stephen died in 1995 from bacterial meningitis. His sperm was retrieved while he was in a coma. The Court of Appeal ruled this was illegal without written consent but that discretion could be used and Mrs Blood had IVF treatment in Brussels.



grandchild. It was a privilege to be able to help them.'

The remarkable case began when the couple, described by Dr Smotrich as extremely rich 'and from a notable family', lost their 26-year-old son in the crash four years ago.

The man's body lay undiscovered for two days but, once recovered, his sperm – which can survive for up to 72 hours following death – was retrieved by a urologist and immediately frozen. After nearly a year, it was flown to Dr Smotrich's clinic, using a UK-based specialist medical courier.

Dr Smotrich, 55, an IVF pioneer who created the first test-tube baby for a same-sex US couple in 1997, was responsible for another UK first in 2001 when he helped Berkshire-based businessman Ian Mucklejohn become Britain's first single dad of triplets.

The doctor said: 'Producing a child using posthumous sperm is exceedingly rare. I have done it only five times. This couple were desperate to find someone who would be able to create an heir. They wanted a boy.'

'What we did is not available in the UK, where gender-selection isn't legal.'

Around five babies a year are born in the UK after their fathers' deaths. Usually the

sperm is extracted while the men are still alive, or children are born from IVF embryos created by a couple before the father's death. But this may be the first UK case in which a baby has been born from sperm extracted posthumously. There have been other cases in India, the US and Australia.

Dr Smotrich said he was 'unaware' of how the grandparents bypassed British law.

Professor Allan Pacey, a former chairman of the British Fertility Society, said: 'If the son in this case wasn't being treated by a clinic, and had not signed the necessary consent forms for the posthumous retrieval, storage and use of his sperm, then a criminal act has probably taken place.'

'The clinician who extracted the sperm is in breach of the law as is the facility which stored and exported the sample.'

Prof Pacey added that, in the absence of proper consent, the fertility regulator the Human Fertilisation and Embryology Authority and the courts should have been involved in decisions over storage and export. The HFEA was unable to confirm whether its committee had reviewed the case.

Dr Smotrich's office manager Diane Batzofin said: 'I took the initial call, from the dead man's

mother. This was a marriage of science and soul. The mother told me it's what her son would have wanted.'

Dr Smotrich said the couple were 'very specific' about the 'type and calibre' of egg donor and surrogate; insisting on someone who matched the kind of woman they believed their son would have married in terms of physical looks, intellect and education.

Both egg donor and surrogate were American. Four embryos were created, one was selected and the couple were present for the birth in the US in 2015. The procedure – including payments to the egg donor, surrogate and hospital fees – is thought to have cost £60,000-£100,000.

The couple returned to the UK after official paperwork naming them as the child's legal parents was complete. Dr Smotrich said he received

'They desperately wanted an heir'

Christmas cards from the family. He claimed to have treated many high-profile individuals including politicians, aristocracy and minor royals seeking to bypass UK fertility laws.

The doctor said he had no ethical objections to helping the couple and confirmed the remaining sperm and three embryos were in storage.

'I'm not here to judge who should be a parent,' he said.

'In this case, from what the parents told me, their son absolutely wanted children. I was happy to help a tragic story end with a happy outcome.'

Additional reporting:
Peter Sheridan