



Council
1 May 2014
Protection of Title Enforcement Policy

Classification	Public
Purpose	For decision
Issue	The GOsC has the power to prosecute persons who commit an offence under s32(1) of the Osteopaths Act 1993. This paper presents a draft Enforcement Policy setting out how and when these powers will be used.
Recommendation	To approve the draft Enforcement Policy for consultation.
Financial and resourcing implications	Costs of investigating and prosecuting protection of title cases are provided in the Regulation Department budget. The draft policy provides for the GOsC to seek its costs in all successful prosecutions.
Equality and diversity implications	None
Communications implications	The GOsC business plan 2013-14 provided for a communications programme to encourage Registrants to report potential protection of title breaches. This policy will be publicised in order to continue to raise awareness of protection of title. The policy will also be made available on the GOsC website to inform the public of the approach taken by the GOsC.
Annex	Draft Protection of Osteopathic Title Enforcement Policy
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Background

1. The Corporate Plan 2013-16 states that the GOsC ‘...will take appropriate action against unregistered individuals describing themselves as osteopaths, prosecuting those who do not desist from doing so’.
2. The GOsC’s powers to protect the osteopath title are contained in s32(1) of the Osteopaths Act 1993, which reads:

A person who (whether expressly or by implication) describes himself as an osteopath, osteopathic practitioner, osteopathic physician, osteopathist, osteotherapist, or any other kind of osteopath, is guilty of an offence unless he is a registered osteopath.

3. These powers came into effect on 9 May 2000 and, since this time, the GOsC has undertaken a number of activities aimed at protecting the osteopathic title.
4. The initial approach was very much aimed at prevention. We took steps to inform all those who may have been previously practising as osteopaths in the United Kingdom (UK) but who had not registered with the GOsC, and sought assurances from these individuals that they understood the law and would comply with it.
5. We also built relationships and worked closely with organisations such as Yellow Pages and Thompson Local to inform them and their staff of the law. A scheme was devised with these organisations to ensure that checks were undertaken to ensure that a person was registered with the GOsC before they were included in the ‘Osteopath’ listing of any directory or website.
6. The GOsC worked closely with the main providers of private medical insurance to ensure that those person’s who were providing osteopathic care to their clients, were in fact registered. This awareness has led to insurers reporting individuals to the GOsC and providing evidence that has supported prosecutions.
7. Much work was also done to build relationships with key partners who could assist the GOsC with enforcement. We communicated with all Trading Standards Authorities to raise awareness of the law and the regulation of the osteopathic profession. The GOsC has worked closely with Trading Standards in some cases and has been greatly assisted by their locality and ability to visit the premises of the potential offenders. Trading Standards have, in the past, issued formal cautions and prosecuted offenders.
8. The GOsC has worked with the RSPCA who has successfully prosecuted a person using s32(1) of the Act. It also, of course, has and continues to work closely with the police and relevant prosecuting authorities across the UK.
9. Having exhausted many of the options available to prevent the unlawful use of the osteopathic title, the GOsC began to seek prosecutions in relevant cases. Initially it sought to encourage other prosecuting authorities to take action. It

then decided to bring its own private prosecutions in relevant cases. This decision was taken because the GOsC was concerned about the low fines being issued in cases that had been brought by others. These low fines gave the impression that the offence was not serious. It was also concerned that cases were being prosecuted using legislation other than the Osteopaths Act 1993. For example, in March 2005, Surrey Trading Standards prosecuted a person who was unlawfully describing himself as an osteopath. The prosecution was brought using the Trades Description Act and resulted in the offender being fined a total of £400 for four offences. In the same year, the GOsC brought a private prosecution using s32(1), which resulted in the offender pleading guilty to and being fined a total of £3,750 for three offences.

10. The GOsC's first private prosecution was brought in 2005. Since this time, the GOsC has brought 18 private prosecutions. The prosecution has been successful in 17 cases and resulted in fines ranging from £155 to £3000 for each offence.
11. This history has helped to inform the draft Enforcement Policy, which was considered by the Osteopathic Practice Committee on 27 February 2014. That Committee made some suggested amendments to the policy, which have been incorporated into the draft annexed to this paper.

Discussion

12. Although the GOsC has been successfully bringing private prosecutions under s32(1) for some years, we believe that it would be helpful to put in place a more formal enforcement policy.
13. The policy should:
 - a. apply to the whole of the UK
 - b. clearly set out the approach that the GOsC takes in order to protect the osteopathic title
 - c. be public so that any person can clearly identify how the GOsC will use its powers under s32(1) of the Act
 - d. direct the Executive to seek compliance with the law wherever possible and prosecute as a last resort
 - e. ensure that any decision to prosecute is made fairly and objectively, and in the public interest.

A draft policy is annexed.

The GOsC's approach

14. The policy confirms that the GOsC's approach is to focus on title misuse that presents a risk to patient safety and public protection and to, where possible, deter offenders and encourage on-going compliance with the law.

15. There is a limit on the resources available within the GOsC and those that can be used to protect the osteopathic title. Those resources should, therefore, be used on cases that present a risk to patient safety. For example, the GOsC can receive reports about other regulated healthcare professionals whose clinic websites appear in the listing under a Google search for 'osteopath'. These individuals are not describing themselves as an osteopath and usually clearly identify themselves as another healthcare professional. Whilst it might be possible to establish that this person is describing themselves as an osteopath by implication, consideration should be given as to whether this presents any risk to the public, given that the person is a regulated healthcare professional.
16. When we receive information that suggests a person is unlawfully describing themselves as an osteopath for the first time, we will write to that person to inform them of the law and ask that they stop describing themselves as such. This can often resolve the problem. If not, further and stronger warnings may be sent. These preventative steps are a proportionate use of resources and can be successful. If they are not successful, they add weight to any later prosecution and have been welcomed by the Courts.

The procedures

17. The procedures currently followed by the Executive to investigate and prosecute offenders have developed over time. These procedures are reflected in the draft policy.

The decision to prosecute

18. The policy requires the Registrar or a person with delegated authority to make a decision to prosecute. Currently staff in the Regulation department will make this decision, having first received advice from counsel. This is, therefore, a slight change to the current procedures.
19. It is not envisaged that this change will be onerous. Staff in the Regulation department can continue to identify cases that are suitable for prosecution but seek approval from Registrar or senior member of staff before initiating the prosecution. This will provide an additional safeguard.

Scotland

20. The position in Scotland is different to that in the other UK countries. It is not possible for the GOsC to bring its own private prosecution in this jurisdiction. It can refer cases to the Crown Office and Procurator Fiscal Service, who may decide to prosecute. Alternatively it can petition for an interdict, which would prevent the person from carrying on activities that put them in breach of s32(1). Failure to comply with the interdict is actionable as a contempt of court and proceedings for a breach of interdict could be brought by the GOsC. Such breach is punishable by fine or imprisonment.

21. The GOsC has obtained an interdict against one person in Scotland. This was obtained in March 2011 and, to date, there has been no evidence to suggest that the person has not complied with the interdict.
22. Given the success of this case, the policy provides for the Executive to either refer a case to the Crown Office or seek an interdict.

Costs

23. The policy recommends that the GOsC should seek the recovery of its costs for all successful prosecutions. The costs of a prosecution vary depending on the scale of the case and whether the defendant pleads guilty or not guilty. Simple cases with a guilty plea usually incur costs in the region of £1000. More involved cases with a not-guilty plea have incurred costs in the region of £11-14,000. These are not, therefore, insignificant costs and the Courts have raised no concerns about the GOsC's claim to recover these costs and will often award full costs.

Publicity

24. The GOsC will issue a press release when it successfully prosecutes a person for a breach of s32(1). The local press are targeted and will often report on the story. This both informs members of the public that the person is not an osteopath and provides a deterrent to other possible offenders.

Consultation

25. The GOsC's powers to prosecute under section 32(1) are significant. There should be sufficient safeguards within any enforcement policy to ensure that there is no abuse of these powers and that they are used objectively, fairly and lawfully. This is the first enforcement policy that will be published by the GOsC and it is important that key stakeholders have the ability to comment on it before it is approved.
26. It is recommended, therefore, that a consultation on the draft policy should be held.

Quality assurance and service standards

27. Operation of the s32 enforcement policy is included within the overall Regulation department quality assurance framework.

Recommendation: to approve the draft Enforcement Policy for consultation.

**Protecting the Osteopathic title
Enforcement Policy – Draft: 6 April 2014**

Introduction

1. This policy outlines the approach that the General Osteopathic Council (GOsC) will take to protect the osteopathic title from unlawful use.
2. Section 32(1) of the Osteopaths Act 1993 (the 1993 Act) makes it a criminal offence for a person, who is not registered with the GOsC to describe themselves, either expressly or by implication, as any kind of osteopath. S32(1) applies to the United Kingdom and it lists, in particular, the following protected titles:
 - Osteopath
 - Osteopathic practitioner
 - Osteopathic physician
 - Osteopathist
 - Osteotherapist
3. Offences under s32(1) of the 1993 Act are a matter of general criminal law and the GOsC does not have exclusive control of the investigation and prosecution of such offences. This policy applies to the GOsC only. It does not apply to or affect the decisions of other law enforcement agencies or prosecuting authorities.

Purpose of a protected title

4. Many professional titles are protected by law in order to provide protection to those who seek the services of professionals. The osteopathic title provides an assurance to patients that the practitioner is competent, fit to practise and holds adequate professional indemnity insurance.
5. The Professional Standards Authority ¹ explains that:

There is a risk to patient safety and public protection when unqualified people pass themselves off as registered professionals. Health professional regulators have a duty to ensure protection for patients and the public, and tackling title misuse is an important part of this.

¹ Professional Standards Authority, Protecting the public from unregistered practitioners – tackling misuse of titles (February 2010)

Public protection and patient safety can be threatened by the misuse of protected titles. For example, title misuse can lead to physical or emotional harm to patients and the public, or financial loss. Misuse of protected titles can undermine public confidence in health professionals and the regulatory systems established to oversee them.

The GOsC's approach

6. To ensure that the available resources are used to their best effect, our approach is to:
 - focus on title misuse that presents a risk to patient safety and public protection
 - where possible, deter offenders and encourage on-going compliance with the law.

The procedures

7. The procedures are set out in the GOsC's *Protection of Title Procedures Guidance*. In summary, these are:
 - allegations or reports of title misuse may be made to the GOsC verbally or in writing, and they may also be made anonymously
 - all allegations and reports will be considered by the Regulation department, who will decide whether to investigate the allegation
 - the GOsC will conduct its own investigation, using enquiry agents to obtain evidence where appropriate
 - where there is evidence to suggest that there is unlawful use of the title, a cease and desist letter will be sent informing the person of the law as it relates to s32(1) of the 1993 Act, asking them to stop using the title and warning that they may be prosecuted for the offence
 - if the person continues to use the title, or initially stops but begins to use the title again in the future, the GOsC will consider whether to prosecute or recommend a prosecution²
 - if the person is located in Scotland, the GOsC will also consider whether to seek an interdict preventing the person from carrying on activities that put them in breach of s32(1).

² In Scotland, enforcement agencies cannot prosecute on their own behalf but must refer cases to the Crown Office and Procurator Fiscal Service.

Prosecutions

8. The decision to prosecute will be made by the Registrar or by a person with delegated authority.
9. In deciding whether to prosecute, the GOsC will:
 - act in the public interest and not solely for the purposes of obtaining a conviction
 - be fair, independent and objective
 - follow the guidance set out in the:
 - Code for Crown Prosecutors issued by the Crown Prosecution Service for England and Wales
 - Prosecutions Code issued by the Crown Office and Procurator Fiscal Service for Scotland
 - Code of Prosecutor issued by the Public Prosecution Service of Northern Ireland.
10. The decision to prosecute may be taken when:
 - the person has been informed of the law as it relates to s32(1) of the 1993 Act
 - the person has been given an opportunity to stop using the protected title
 - the person has continued to use the title, or began to use it again, having been informed of s32(1)
 - the offence has been committed within the last six months³
 - there is sufficient evidence for a realistic prospect of conviction
 - it is in the public interest to prosecute.

Sufficient evidence

11. There must be sufficient evidence to provide a realistic prospect of conviction against each person for each charge.
12. When deciding whether or not there is sufficient evidence to prosecute, the GOsC will consider whether the evidence is:
 - admissible

³ Section 127 of the Magistrates' Court Act 1980 states that for all summary offences the information must be laid with the Magistrates' Court within six calendar months of the commission of the offence.

- reliable
- credible.

Realistic prospect

13. The decision as to whether there is a realistic prospect of conviction must be based on an objective assessment of the evidence, including the impact of any defence or information put forward by the person accused.
14. The person making the decision should be satisfied that an objective, impartial and reasonable jury or bench of magistrate or judge hearing the case alone, properly directed and acting in accordance with the law, is more likely than not to convict the person accused of the charge alleged.

Public interest

15. Where there is sufficient evidence to provide a realistic prospect of conviction, the public interest in prosecuting must also be considered.
16. The GOsC's role and the purpose of a protected title are to protect the public. Therefore, a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in favour.
17. In deciding whether there is a public interest in prosecuting, the GOsC will consider:
 - whether the offending activity is on-going, has ceased, or is likely to continue, escalate or be repeated
 - the period of time over which the offending activity continued
 - whether the offence was committed intentionally or as a result of a mistake or misunderstanding
 - whether the person accused was at the time of the offence or is suffering from any significant mental ill health
 - whether a member of the public was harmed or put at risk of harm by the offending
 - whether the prosecution is likely to have a significant effect on maintaining public confidence in the profession or in deterring others from offending
 - whether the person accused was warned prior to committing the offence
 - whether a prosecution is a proportionate response to the conduct leading to the offence.

18. The questions identified are not exhaustive, and not all the questions may be relevant in every case.
19. When proceeding with a prosecution, the GOsC will:
 - ensure that the law is properly applied
 - ensure that all relevant evidence is put before the Court
 - ensure that disclosure obligations are met
 - act in accordance with the Human Rights Act 1998.

Prosecution costs

20. The GOsC is funded by Registrants' fees, which it has a duty to use responsibly. The costs of a prosecution can be high and the GOsC will seek to recover its full costs when it has successfully prosecuted an offender under s32(1).

Working with others

21. The GOsC will liaise and co-operate with other agencies and prosecuting authorities to ensure that offenders of s32(1) are prosecuted, where appropriate. This includes the police, Crown Prosecution Services, Crown Office and Procurator Fiscal Services, Public Prosecution Service for Northern Ireland, other health and social care regulators and Trading Standards.

Publicity

22. Publicity from convictions informs members of the public about offenders. It has also been a deterrent to others who may be misusing the title. For these reasons, the GOsC will publicise cases where it has successfully prosecuted under s32(1).