



Council
10 May 2022
Protection of Title Enforcement Policy Statement

Classification	Public
Purpose	For decision
Issue	This paper invites Council to agree the amendments made to the GOsC Protection of Title Enforcement Policy Statement following a rapid review by the Executive of the Policy approved by Council in November 2014.
Recommendation	To agree the amendments made to the GOsC Protection of Title Enforcement Policy Statement.
Financial and resourcing implications	Within existing budget.
Equality and diversity implications	Any breach of section 32 is considered on its own merits.
Communications implications	The amended Protection of Title Enforcement Policy will be published on our website
Annexes	A - Enforcement Policy with proposed tracked changes B - Clean version of the amended Enforcement Policy
Authors	Sheleen McCormack and Matthew Redford

Key messages from the paper:

- We conducted a rapid review of our Section 32 Enforcement Policy which had not been considered for a number of years.
- We have made amendments that enhance, but do not change, our position.
- The key changes we have made are:
 - reference to our overarching statutory objective to protect the public, and
 - the addition of an appendix containing case studies where we have successfully prosecuted offenders in the past.

Background

1. Section 32(1) of the 1993 Act makes it a criminal offence for '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'.
2. In November 2014, we published a Protecting the Osteopathic title GOsC Enforcement Policy to ensure that both our principles and the approach we take to protect the osteopathic title from unlawful use are clear and transparent.
3. Our section 32 Enforcement Policy underpins our approach to protection of the title 'osteopath'. In recent months we have looked afresh at the Enforcement Policy when we were asked to clarify our position in relation to the use of prefixes with the protected title osteopath for non-registered individuals.
4. As outlined in the Chief Executive's report to Council in February 2022, we planned to undertake a rapid review of the Enforcement Policy. While we considered the policy remained current, we considered on reviewing the policy that it could be enhanced by, for example, by the provision of case examples of successful prosecutions we have brought in the past and by updating references, most notably, by the inclusion of the amendments made by the Health and Social Care (Safety and Quality) Act 2015 which added the over-arching objective of the protection of the public in the exercise of our functions.

Discussion

5. Our Enforcement Policy sets out our approach to deciding whether to commence enforcement action and states 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
6. Any case would be considered on its own merits/facts and enforcement action determined after application of the policy to the case in question.
7. We have made amendments to the Enforcement Policy which we consider enhances but does not alter our approach.
8. The key changes include:
- An introduction setting out who the GOsC is together with the range of different ways we work with the public and osteopathic profession to promote patient safety. The purpose of this is to ensure the policy is a 'stand-alone' reference document for external stakeholders.
 - A reference to our overarching objective as amended by paragraph 3 of the Schedule to the Health and Social Care (Safety and Quality) Act 2015.
 - The addition of an appendix to the policy detailing a selection of previous cases where the GOsC has successfully prosecuted offenders.
9. We have included at Annex A the amended Enforcement Policy with tracked changes. Annex B is a 'clean' copy of the proposed amendments. If approved, we will include a 'version' control to the policy documenting the amendments made and when these were approved.

Recommendation: To agree the amendments made to the GOsC Protection of Title Enforcement Policy Statement.

Annex A to 10



Protecting the Osteopathic title GOsC Enforcement Policy

Statement Effective from ,

Deleted: 6 November 2014

Introduction

1. The General Osteopathic Council (GOsC) is the statutory healthcare regulator for osteopaths. The Osteopaths Act 1993 (the 1993 Act) requires that all osteopaths must be registered with the GOsC in order to practise in the UK. The overarching objective of the GOsC is the protection of the public. This involves the pursuit of the following objectives:

Deleted: 1.

a) protecting, promoting and maintaining the health, safety and well-being of the public;

b) promoting and maintaining public confidence in the profession of osteopathy; and

c) promoting and maintaining proper professional standards and conduct for members of that profession.¹

2. As a regulator, we use a range of different ways to work with the public and osteopathic profession to promote patient safety including:

- setting, maintaining and develop standards of osteopathic practice and conduct;

- investigating serious allegations of misconduct which calls into question an osteopath's fitness to practice;

- assuring the quality of osteopathic education and ensuring that osteopaths undertaking continuing professional development.

¹ Amended by paragraph 3 of the Schedule to the Health and Social Care (Safety and Quality) Act 2015.

Annex A to 10

3. We have published this policy to ensure that our principles and approach the GOsC will take to protect the osteopathic title from unlawful use are both clear and transparent.

4. Section 32(1) of the 1993 Act makes it a criminal offence for

'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'.

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Deleted: is policy outlines

Deleted: the approach that the General Osteopathic Council (GOsC) will take to protect the osteopathic title from unlawful use.

5. 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.

Deleted: 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

Purpose of a protected title

6. 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.

7. The Professional Standards Authority² 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.

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

8. In regulating misuse of the title osteopath' our objective is to limit the harm as swiftly and effectively as possible. To ensure our resources are targeted,

² Professional Standards Authority, Protecting the public from unregistered practitioners – tackling misuse of titles (February 2010)

Annex A to 10

proportionate and applied consistently, our approach is to focus on title misuse:

- which presents a risk to patient safety and public protection;
- where possible, deters offenders and encourage on-going compliance with the law.

The procedures

9. 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 prosecution³;
 - 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).

Prosecutions

10. The decision to prosecute will be made by the Registrar or by a person with delegated authority.
11. In deciding whether to prosecute, the GOsC will

³ In Scotland, enforcement agencies cannot prosecute on their own behalf but must refer cases to the

Crown Office and Procurator Fiscal Service.

Deleted: 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.

Moved (insertion) [1]

Moved up [1]: where possible, deter offenders and encourage on-going compliance with the law.

Annex A to 10

- act in the public interest and not solely for the purposes of obtaining a conviction be fair, independent and objective
- ~~and follow~~ the ~~relevant~~ guidance set out in ~~either~~ 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.

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12. 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 months⁴
- there is sufficient evidence for a realistic prospect of conviction
- it is in the public interest to prosecute.

Sufficient evidence

13. There must be sufficient evidence to provide a realistic prospect of conviction against each person for each charge.

14. When deciding whether or not there is sufficient evidence to prosecute, the GOsC will consider whether the evidence is:

- admissible
- reliable, and,
- credible.

Realistic prospect

⁴ 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.

Annex A to 10

15. 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.

16. 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

17. Where there is sufficient evidence to provide a realistic prospect of conviction, the public interest in prosecuting must also be considered.

18. The GOsC's role and the purpose of a protected title are to protect the public.

19. Therefore, a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in favour.

20. In deciding whether there is a public interest in prosecuting, the GOsC will consider the following, non-exhaustive, factors:

- 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.

Deleted: 18. The questions identified are not exhaustive, and not all the questions may be relevant in every case.¶
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.

Annex A to 10

Prosecution costs

21. We are funded by Registrants' fees, which it has a duty to use responsibly. The GOsC will seek to recover its full costs when it has successfully prosecuted an offender under s32 (1).

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Working with others

22. 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

23. Publicity from convictions informs members of the public about offenders. It has also been a deterrent to those who may be misusing the title and acts as a useful insight for others who may otherwise have used the title illegally. For these reasons, the GOsC will publicise cases where it has successfully prosecuted under s32 (1).

Deleted: others

24. A selection of previous cases where the GOsC has successfully prosecuted offenders is contained in the Appendix to this policy.

Annex A to 10

Appendix

Case One

Mr A was unregistered (but had previously qualified in osteopathy) and described himself as an osteopath. His practice, however, was limited to the treatment of horses. Mr A pleaded guilty to two charges on 30th May 2008 and was fined. He made no attempt to defend himself on the basis that his practice was confined to animals. Mr A was accused of breaching section 32 on two occasions, both in connection with websites under his control. The GOsC put evidence before the Court that it had warned Mr A about breaches of section 32 several times between 2003 and 2005. Mr A stated that he had not intended to mislead the public, and that his work as an equine therapist entitled him to make reference to his osteopathic qualification. However, the District Judge made clear to Mr A that his actions did have a tendency to mislead the public, and he would be sentenced on that basis. The judge went on to deal with the references on the websites to Mr A's professional qualifications, saying that Mr A had been 'wholly wrong to mention osteopathy' in this context.

Case Two

Mr B was not registered (and had never been) as an osteopath with the GOsC. The offence related to information that Mr B continued to provide on his websites, which implied that he was an osteopath. MrB was given warnings by the GOsC that by continuing to use the osteopathic title he may be committing a criminal offence, but despite this, he failed to make adequate amendments to his websites. Mr B did not attend court, nor was he represented. The Magistrates determined to proceed in his absence and found him guilty of breaches of section 32. He was fined £1,000 and ordered to pay costs of £960 to the GOsC. Mr B was also ordered to pay a Victim Surcharge of £100.

Case Three

Following an investigation into his fitness to practise as an osteopath, Mr C was found guilty of unacceptable professional conduct at a hearing before a Professional Conduct Committee and was removed from the GOsC's Register of osteopaths. Mr C was no longer permitted to use the osteopathic title.

Annex A to 10

However, Mr C continued to provide references which implied that he was an osteopath on his clinic website. Despite repeated warnings from the GOsC to Mr C that by using the osteopathic title he may be committing a criminal offence, he failed to make adequate amendments to his clinic website. At the Magistrates Court, Mr C was found guilty of unlawfully describing himself as an osteopath after he had previously been removed from the GOsC's Register of osteopaths. Mr C was fined £1,000 plus a victim surcharge of £100 and ordered to pay costs of £657.70 to the GOsC.

Annex B to 10



Protecting the Osteopathic title GOsC Enforcement Policy Statement

Effective from May 2022

Introduction

1. The General Osteopathic Council (GOsC) is the statutory healthcare regulator for osteopaths. The Osteopaths Act 1993 (the 1993 Act) requires that all osteopaths must be registered with the GOsC in order to practise in the UK. The overarching objective of the GOsC is the protection of the public. This involves the pursuit of the following objectives:
 - a) protecting, promoting and maintaining the health, safety and well-being of the public;
 - b) promoting and maintaining public confidence in the profession of osteopathy; and
 - c) promoting and maintaining proper professional standards and conduct for members of that profession.⁵
2. As a regulator, the GOsC uses a range of different ways to work with the public and osteopathic profession to promote patient safety including:
 - setting, maintaining and develop standards of osteopathic practice and conduct;
 - investigating serious allegations of misconduct which calls into question an osteopath's fitness to practice;
 - assuring the quality of osteopathic education and ensuring that osteopaths undertaking continuing professional development.
3. We have published this policy to ensure that both our principles and the approach we take to protect the osteopathic title from unlawful use are clear and transparent.

⁵ Amended by paragraph 3 of the Schedule to the Health and Social Care (Safety and Quality) Act 2015.

Annex B to 10

4. Section 32(1) of the 1993 Act makes it a criminal offence for

'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'.

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Purpose of a protected title

6. 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.

7. The Professional Standards Authority⁶ 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.

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

8. In regulating misuse of the title 'osteopath' our objective is to limit the harm as swiftly and effectively as possible. To ensure our resources are targeted, proportionate and applied consistently, our approach is to focus on title misuse:

- which presents a risk to patient safety and public protection;
- where possible, deters offenders and encourage on-going compliance with the law.

⁶ Professional Standards Authority, Protecting the public from unregistered practitioners – tackling misuse of titles (February 2010)

Annex B to 10

The procedures

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- 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 prosecution⁷;
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Prosecutions

10. The decision to prosecute will be made by the Registrar or by a person with delegated authority.

11. 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
- and follow the relevant guidance set out in either the:
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Annex B to 10

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- the offence has been committed within the last six months⁸
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