

Protecting the Osteopathic titles

Enforcement Policy – Draft for consultation: June 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 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 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 Authority¹ 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

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
 - 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

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

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

- 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

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
 - 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 begun 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.

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.

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

- admissible
- 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 tribunal, 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 now 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).