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19 August 2016

Elaine Buckley

Chair

HCPC

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Dear Mrs Buckley

I write further to my letter and enclosures of 15 August. Yesterday, I received correspondence from your Chief Executive and Registrar, Marc Seale, which included copy of a reply he had sent to my constituency MP, Mark Menzies dated 17 August. In his covering letter, Mr Seale informs me that he is writing with reference to the letter I sent you. I assume therefore that you have received and read the material I sent last Monday and that you have also read the reply that was sent to Mr Menzies. Is that a correct assumption?

If you have read the papers I sent, it will be abundantly clear that the Registrar’s version of the matters leading up to my prosecution is completely inaccurate. I have provided you with a detailed and factual account of the circumstances and events that led me to cease registration and my conduct thereafter. There is a historical record of this case online dating back to 2008 at [www.podiatry-arena.com](http://www.podiatry-arena.com) which you can access from the links on the home page. If you read the entries, you will note my account is consistent throughout.

The Registrar’s letter to Mr Menzies is both illuminating and deeply concerning. In the penultimate paragraph, Mr Seale claims;

***“The HCPC has never sought to conceal the “intent to deceive” element of the offence***.***”***

That is quite untrue.

The Council has never advanced the position other than it is an offence to use a protected title without registration. It has never stated that an offence can only occur providing there is an accompanying intent to deceive. Further, it has never stated that registrants who chose to cease registration can lawfully use a designated title providing they take sufficient precautions to inform the public that they are not registered.

I now know from all the legal argument that the foregoing is the actual position in law, which the legislation provides. The Registrar was clearly aware of the necessity of satisfying the ITD element of the offence by his wording in that statement. But the meaning and importance of that term was never communicated to the registrants or any of the professional bodies. I sincerely doubt that any registrant of the HCPC had any knowledge of the particulars of the offence before this case.

Can you provide me with any guidance or advice statements issued by the Council that provides information regarding the ITD? The Nursing and Midwifery Council issued a policy statement following a review of the legislation in 2013 where it advised their registrants could use a designated title after ceasing registration provided they did not give the impression they were still registered by using initials such as RN or RMN and must only refer to themselves as “nurse”. The NMC legislation is synonymous with your own. Can you provide me with a similar policy statement and tell me when it was issued?

The truth of the matter is that the Registrar has concealed the relevance of this part of the legislation from all the professional bodies, registrants and most probably your Council too, until very recently. This misleading position was reinforced by the use of the term “protected titles” in all the literature issued by Council since 2003 – yet there is no mention of “protected titles” in the legislation – only designated titles are provided for. Whereas I would agree that one of the HCPC’s functions is to “protect” those titles for use by those on its register, its ability to do so is significantly impaired by the inclusion of the ITD element in the wording of the offence.

None of this was known or familiar to me before this prosecution started. Nor was it known to any of my colleagues. If I may direct you to the comments by colleagues on my website at the end of the article entitled “An Absence of Candour” you will note I am not alone in my ignorance on this matter. I presume you have read the Witness Statement from Mr Ralph Graham, included in the documents I sent? The colleague to whom he refers in paragraph (10) is Ms Pam Sabine – a long-standing Council member at the HCPC. She also was completely unaware of this issue. Are their opinions “unbelievable”, ‘nonsense”, “incredible” and “not worthy of belief” too?

Whilst I admit that the full wording of the legislation, including the ITD element was communicated to me in various correspondence by case managers and your legal agents, my understanding of its relevance was always going to be deficient, given the numerous statements on “protected titles” by the HCPC. The Registrar and your legal agents would have known this before commencing the prosecution three years ago. To state the obvious; I am a chiropodist, not a lawyer. I trusted what the Council and its legal agents had told me to be correct.

Why wasn’t I informed in 2008 - when I advised the Registrar that I was deregistering but intended to continue in practice as a “podiatrist” – that I could lawfully do so providing I took every precaution to inform my patients and the public that I was no longer registered?

Why was I not informed by the Council or its agents before or during the first prosecution about the relevance of the ITD element? I had made it repeatedly clear that I had acted openly, honestly and had never deceived anyone since I ceased registration. Given the significance of that information, why wasn’t I advised that I would be pleading guilty to an offence “with intent to deceive”?

You must also consider Judge Pontius’ remarks in the Old Bailey hearing:

*“That charge [Misuse of Title], as recorded on the memorandum, does not mention any specific intent. It should have done, because it is an essential ingredient of the charge...the charge was not set out in full as the clerk read the charge…it was the wording of the charge as put that was the determining factor from my point of view that any idea he did have as* ***very soundly reinforced by the wording of the charge as put to him”***

Judge Pontius then considered the application for my original plea of “guilty” to be set aside, but not before making the following observations;

*“The application was based on the Appellant`s understanding…****He made his position plain throughout that he had not deceived, and I accept that he stated that [he]had no intention so as to deceive****…His motive was the lacuna in the legislation that allowed the unqualified to practice…”*

He then awarded the application for my plea to be vacated.

The above comments are clear evidence that the Registrar has absolutely concealed the relevance of the intent to deceive element of the offence and has improperly misdirected the Crown Court Appeal when he instructed the prosecuting QC to state otherwise. The evidence that was advanced by the prosecution in this case was factually wrong and has clearly influenced the Bench in reaching their verdict, as per the comments from Judge Beach.

Whilst this statement from Mr Seale to Mr Menzies denying any concealment took place is incriminating enough, it is the final paragraph that I find deeply offensive and insulting. To suggest that the circumstances I now face are self-inflicted and that I am somehow responsible for the costs incurred in this prosecution is reprehensible.

I have enclosed copies of the letters I sent to the Registrar in 2008. Had I been given the courtesy of a reply, acknowledging my concerns with an undertaking to try and address them through the channels that are open to him, then I would not have cancelled my registration and there would have been no prosecution whatsoever.

Had I known about the intent to deceive element of the offence at any time, there wouldn’t have been a prosecution either. The offence is essentially one of dishonesty and that would certainty have influenced my decision at the time. My only motive in defending this case was to secure an apology and a retraction of the highly damaging statement the Council issued following the first prosecution.

You will have no idea the effect this distressing case has had on me, personally, professionally and financially and it is perfectly clear from the Registrar’s remarks that it is of little consequence to him. That is, if I may suggest, a disgraceful attitude not least considering his culpability and dishonesty and I sincerely hope you will distance yourself from it.

Given the foregoing and the inaccurate and untruthful statements made in his letter of 17 August to Mark Menzies MP, I am formally raising a complaint against Mr Mark Seale for his dishonest and deceitful conduct and gross misuse of registrant funds

Please be advised that I have already referred this matter to the Professional Standards Agency and I have asked Mark Menzies to request scrutiny from an appropriate Parliamentary Committee, whether that be Health or Justice or both. Naturally I will forward this correspondence to Mr Menzies and the PSA for consideration. In the circumstances, I hope that you will support my application for an independent inquiry into this affair, if for no other reason than to restore some of the confidence and trust that will undoubtedly be damaged by these revelations.

Mr Seale is correct in one aspect; I was not prosecuted for reporting a concern, as I had naïvely thought. I was prosecuted because I had unwittingly and unknowingly exposed the other lacuna in the legislation that your Registrar has regrettably endeavored to conceal – where use of titles whilst unregistered is permitted. That is a disgrace.

I would greatly appreciate if you could personally acknowledge receipt of this letter and enclosures by telephone or email. I would also be happy to meet with you this week to answer any questions you may have about these submissions. I realise that this is a difficult matter and I am sincerely sorry that it has happened under your chairmanship, but I ask you to carefully consider all that I have provided you with and take whatever steps you can to have this unjust conviction set aside.

Can I also please ask that you reply directly to the issues I raised in my letter to you last Monday?

I look forward to hearing from you in due course.

Yours sincerely

Mr Mark Russell