

HEALTH PROFESSIONS COUNCIL

Prosecution Policy

Introduction

Under the Council's Scheme of Delegation, the Chief Executive and Director of Fitness to Practise are responsible for the prosecution of offences under Article 39 of the Health Professions Order 2001 ("the 2001 Order"), but subject to any prosecutions policy established by the Council. This paper sets out that prosecutions policy.

Offences under the 2001 Order

Article 39(1) of the 2001 Order creates three types of offences relating to the protection of title:

- falsely representing that a person is on the HPC the register;
- misusing a title protected by the 2001 Order;
- falsely representing possession of a qualification in a relevant profession

Article 39(3) extends liability for such offences to a person who make such representations on behalf of another and to a person who permits another to do so on his or her behalf.

In addition, Article 39(4) provides for separate offences relating to fraudulent register entries and Article 39(5) makes it an offence to fail to comply with a requirement to produce documents or appear at a hearing made by a Panel or to respond to requirements to provide information made by an HPC Investigator (i.e. an "authorised person" under Article 25(1) of the 2001 Order).

Policy: Protection of title offences

To ensure that the available resources are used to their best effect, the focus of HPC's enforcement activities in relation to the protection of title should be directed at preventing misuse of titles and encouraging continued compliance with the law rather than isolated prosecution. However, throughout the enforcement process it must be made clear that HPC will not hesitate to prosecute where it is appropriate to do so.

Normally, the prosecution process should be as follows:

- all necessary steps should be taken to secure continued compliance with the relevant provisions of the 2001 Order;
- in the first instance, suspected offenders should be given 14 days in which to explain any alleged offence, but subject to a warning that they may be prosecuted without further notice if they fail to respond within 14 days;
- where it is established that conduct which may be an offence has taken place, the person concerned should be served with a 'cease and desist' notice and required to confirm, within 14 days of the notice being served, that the offending conduct has ceased and, where appropriate, that they give an undertaking that it will not be repeated;

- if these steps fail, action should be taken to prosecute the alleged offender.
- It must be made clear throughout that, HPC will not hesitate to prosecute where it is appropriate to do so.

Policy: Other offences

In respect of offences under Articles 39(4) and Article 39(5), HPC's policy is that these will need to be dealt with on a case by case basis.

The decision to prosecute

In deciding whether to prosecute in respect of any offence HPC will:

- be fair, independent and objective, not letting any views about ethnic or national origin, sex, religious beliefs, political views or sexual orientation influence decisions and not be affected by improper or undue pressure from any source;
- act in the interests of justice and not solely for the purpose of obtaining a conviction;
- ensure that the law is properly applied, that all relevant evidence is put before the court and that disclosure obligations are met;
- act in accordance with the Human Rights Act 1998; and.
- act on the basis of the established evidential and public interest tests.

The evidential test

A prosecutor must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against a defendant on each charge, taking account of what the defence case may be, and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a district judge or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the "beyond a reasonable doubt" one that the courts themselves must apply.

In deciding whether there is enough evidence to prosecute, those acting on HPC's behalf must consider whether the evidence can be used and is reliable. In many cases the evidence will not give any cause for concern but, in cases in which the evidence may not be as strong as it first appeared, the following need to be considered:

- is the evidence admissible?

Can the evidence be used in court or is it likely to be excluded, for example, because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

- is the evidence reliable?

Is there evidence which might support or detract from the reliability of other evidence? What explanation has the defendant given and is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation? Are any witnesses likely to weaken the prosecution case, for example,

because of any motive that may affect his or her attitude to the case, or a relevant previous conviction? Are there concerns over the accuracy or credibility of a witness?

The public interest test

In 1951, Lord Shawcross, the then Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since:

“It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution”.

In each case where there is enough evidence to provide a realistic prospect of conviction, the public interest in prosecuting must be considered.

HPC’s role is to protect the public. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.

Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. Those factors include:

- the court is likely to impose a nominal penalty;
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence, unless the nature of the particular offence requires a prosecution;
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- a prosecution is likely to have a bad effect on the victim’s physical or mental health;
- the defendant has put right the loss or harm that was caused.

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