This is an appeal against the conviction of Mark Russell by West London Mags on 26 January 2015 when he was found guilty of one offence of using a protected title to which he was not entitled namely the titles of Podiatrist and/or Chiropodist with intent to deceive contrary to article 39(1) of the Health and Social Work Professions Order 2001 ("the 2001 Order") as enacted by ss.60 & 62(4) of the Health Act 1999. The relevant offending period within the summons was "up to and including 7 March 2013". In fact it covers the 6 month period prior to 7 March 2013, so 8 September 2012 to 7 March 2013. It should be noted at this point that the correct terminology is "designated title" rather than "protected title" although no issue has been raised on this point and in any event, the purpose of the statutory regime is to protect the designated titles set out in Schedule 1 of the Health Profession (Parts of and Entries in the Register) Order of Council 2003.

Mr Russell lodged a Notice of Appeal on 3 February 2015. The single ground of appeal contained therein was that there was no evidence before the court upon which it, if properly directed, could have found Mr Russell guilty. The Respondent to the appeal is the Health and Care Professional Council.

The appeal was listed originally for 1 and 2 October 2015 at Lancaster CC. However, the first day of that listing was taken up with arguments about the validity of the summons. This point had not previously been taken by Mr Russell in the magistrates court; neither had the HCPC or the court been put on notice of Mr Russell's intention to take the point until very shortly before the listing (a skeleton argument being served on 24 September 2015) and as a result there was insufficient time for this appeal to be concluded within the two days allocated. It was therefore adjourned to 10 December 2015 to allow the appeal to be concluded. Mr Russell then gave evidence but sadly, again there was insufficient time to conclude this appeal. The matter was adjourned to 22 April 2016 at which point, the court heard witness evidence in support of Mr

Russell and legal submissions. Today's date is the first which could be identified which was suitable to all parties and the bench.

The relevant background circumstances to this appeal are that the HCPC is a statutory body with regulatory functions over a number of professions, including those of chiropody and podiatry. By virtue of paragraph 3(2) of the 2001 Order, the HCPC's principal functions shall be to establish standards of education, training, conduct and performance for members of the relevant professions and to ensure maintenance of those standards.

By virtue of paragraph 3(4) of the 2001 Order, the main object of the HCPC in exercising its functions shall be to safeguard the health and well being of persons using or needing the services of the registrants.

By virtue of paragraph 5, the Registrar of the HCPC is required to establish and maintain a register of those who are entitled to use certain designated titles, including chiropodist and podiatrist and we should note at this stage that it is implicit that those titles include the use of the terms "chiropody" and "podiatry". Those who are entitled to registration will have the requisite qualifications, the requisite standards of proficiency and they will meet the requirement of being of good health and good character (otherwise known as fitness to practice).

The purpose of the regime is clear. Only those who are registered with the HCPC and it follows therefore, that they are suitably qualified, can call themselves chiropodists or podiatrists. The public can have confidence that someone who is registered is not only suitably qualified but that they have and continue to comply with the regulatory requirements of continuing education, ethics and good conduct and that there is an important procedure set out in Part V of the 2001 Order which is available to consider complaints made about the registrants if necessary.

There are three criminal offences created by paragraph 39(1) of the 2001 Order. It is an offence if with intent to deceive (whether expressly or by implication) a person:

a) falsely represents himself to be registered in the register, or a particular part of it or to be the subject of any entry in the register;
b) uses a title referred to in article 6(2) to which he is not entitled (the offence with which Mr Russell was charged);
c) falsely represents himself to possess qualification in a relevant profession.

To use ordinary language, the offence created by paragraph 39(1)(b) of the Order is complete if a person either expressly uses a designated title i.e. calls himself a podiatrist or implies that he is entitled to use a designated title such as podiatrist when he is not a registrant and that he does so, with intent to deceive.

Background

It is accepted that Mr Russell holds the appropriate qualifications in chiropody and podiatry and that until August 2008 he was registered with the HCPC. He then failed to renew his registration but continued to practice as a chiropodist and podiatrist and has promoted himself using the designated titles even on occasions, holding himself out to be registered with the HCPC when he was not. Whilst much of the documentation concerns the period prior to the offending period covered by the summons, that documentation nevertheless contains important background information as it set out Mr Russell's approach to the issue of him holding himself out as someone entitled to use the designated titles.

On 3 December 2009, Debbie Gahan of Standard Life Health Care (a health insurance provider) informed the HCPC of the content of the website of the Ansdell House Clinic where Mr Russell practiced at that stage which

demonstrated that Mr Russell described himself as "HPC registered chiropodist/podiatrist". There followed a quote from Mr Russell setting out his qualifications and clinical experience. The website did not mention that he was neither entitled to use the designated titles or that he was not HPC registered as alleged on the website. That was December 2009 and by that stage, Mr Russell had not been registered with the HCPC for 16 months. A letter was sent dated 4 December 2009 from a Case Manager at the HCPC advising Mr Russell of the full wording of the criminal offence contained in paragraph 39(1) of the 2001 Order and requiring him to desist from using the protected titles within 14 days. We find, that Mr Russell is an intelligent man and he could not have been in any doubt at that stage about the particulars of the criminal offence.

Debbie Gahan contacted the HCPC a very short time later, producing an invoice in the name of Mr Russell dated 9 December 2009 for treatment provided to one of the clients of Standard Life. That invoice will feature later in this judgment. So, having written to him on 4 December, 2009, a follow up letter was sent and this drew a response from Mr Russell in April 2010. This was on the headed note paper of Andsell House Clinic which referred to "Chiropody and Podiatry Services" and which described Mr Russell as being a "state registered chiropodist/podiatrist" which of course was untrue. He complained about the inability of the HCPC to deal with vexatious and false complaints against registrants who were caused financial hardship by the complaints and that there was no deterrent against false complaints. Mr Russell made it clear that he intended to continue to use the designated titles but he would ask the web hosting company responsible for the clinic's website to remove the words "HPC registered". He signed himself off as "podiatrist".

Mr Russell was telephoned by the HCPC Case Manager. He was told that his concerns about vexatious complaints were quite separate to the issue of the specific protection of the designated titles and that he should apply to re-register.

By June 2010, the clinic's website remained un-amended. Mr Russell was contacted again. He confirmed that he would ask for the website to be amended and that he would submit an application for re-admission.

By an email sent on 14 July 2010, Mr Russell advised that he was having difficulties arranging for the amendments to the website but that he had completed his application for re-admission.

Nothing was heard from Mr Russell and so on 17 September 2010, he was written to again. He was told not to use the titles "chiropodist, chiropody, podiatrist or podiatry". Mr Russell responded in November 2010 stating that he was not intending to re-register because of his concerns about the inability of the HCPC to protect the public and to protect registrants from malicious and unfounded complaints. He would refrain from advertising himself as "HPC registered" but would not give the same undertaking in relation to the use of the titles "chiropodist" and "podiatrist".

On 23 December 2010, Mr Russell was written to again and informed that he could not lawfully use the "protected" titles.

On 12 January 2011, Mr Russell was written to again. The Ansdell House website continued to describe the services offered as "chiropody/podiatry" when it should have been something like "foot health" and Mr Russell was still described as being "HPC registered Chiropodist/Podiatrist". The issue rumbled on and then there appears to be some missing documentation as in May 2011, a case manager noted that Mr Russell had agreed to cease using the protected titles and that he had removed the website. Indeed, a letter dated 31 May 2011 addressed to Mr Russell confirms that correspondence had been received from him in which he stated that he would cease using the titles "chiropodist" and "podiatrist" and that those words had been removed from his website.

The HCPC relies on an invoice for podiatry treatment and podiatry fees issued by Mr Russell on 15 Sept 2011 to Michael Hedges, to show that he continued to use the protected titles or that certainly at that stage, he was inferring that he was entitled to do so. The Invoice refers to a "State Registered Chiropodist/Podiatrist" in the singular in its summary of services provided. That could only have been Mr Russell. So, whilst he had indicated that he would stop using the designated titles, it would appear that he continued to do so.

Then on 3 March 2012, an email was sent from Ansdell House clinic to the HCPC enclosing a number of documents relating to Mr Russell. They included a letter to a GP in Lytham dated 17 January 2011 asking for his client to be prescribed a course of antibiotics. Mr Russell signed himself off as Podiatrist. There are three other letters to GPs in Feb 2012 in the same terms. There was also an advertisement on the website of the Wesham Road Runners down loaded on 30 March 2012 headed "foot health and podiatry services" and describing Mr Russell as a Podiatrist and HPC Registered Chiropodist. His clinic address was The Old Surgery, 261 Church Rd, St Annes (the Andsell House Clinic address). The letters to the GPs in January and February 2011 also demonstrate, the HCPC submit, that Mr Russell was holding himself out as someone who was entitled to use the title Podiatrist when he had no such right. The HCPC asks the Court to infer that in signing himself off in the way that what he did involved an implicit and intentional deception in relation to the GP's.

Eventually Mr Russell received two warnings that if he continued with his activities, he would be prosecuted, setting out the terms of paragraph 39(1) of the 2001 Order in full. The first was 5 April 2012, one year after Mr Russell gave an assurance that he was going to be compliant. Mr Russell replied on 18 April 2012 describing the HCPC as an "ineffectual regulator" and that its

primary function of protecting the public was seriously impaired. Protection of title was meaningless without protection of function within the profession. Further, there were aspects of the HPC which was detrimental to public safety because it had insufficient powers to deal with malicious and vexatious complaints. He wanted the HCPC to have the power to prosecute such complainants and award compensation to cover the loss to registrants who had had malicious complaints made against them. There was no desire on the part of parliament to change the legislation and so he had no choice but to defy the registration requirements. **He had not deceived anyone intentionally** in relation to his status and he welcomed a court hearing to clarify his argument. He telephoned the HCPC on the same day and the file note made by Rachel Bull recorded that Mr Russell had no intention of ceasing to use the designated titles because he was qualified as such and was **entitled to use them.** He was happy for the HCPC to prosecute him.

The correspondence continued. On 14 May 2012, the solicitors now acting for the HCPC, Bircham Dyson Bell, wrote to Mr Russell to warn him that he faced prosecution if he continued to use the "protected" titles. His response on 12 June 2012 indicated that he was not against regulation of his profession. He repeated his arguments about the jurisdiction of the HCPC failing to include those who were not podiatrists or chiropodists but who provided foot health services and that he welcomed a court hearing for consideration of the "influence of the human rights legislation in relation to a claim of protection of title". He repeated his assertion that he had **never intended to deceive patients or colleagues**.

The prosecution warning was repeated on 5 July 2012 to which Mr Russell replied on 17August 2012 advising that if the HCPC confirmed within 21 days that it would address the deficiencies in the current legislation so that the public were properly protected and that the law could not be so readily circumvented by unregulated practitioners, including those who had been struck off for

misconduct, that he would be happy to re-register. Otherwise his position would remain the same.

The period covered by the summons

The charge covers the period 8 September 2012 to 7 March 2013. The HCPC relies upon one letter dated 12 December 2012 written by the Appellant in response to a complaint made by the mother of Michael Hedges, the patient who was provided services invoiced by Mr Russell on 15 September 2011, an invoice already mentioned during the course of this judgment. In fact, Mr Russell provided the court with a bundle of correspondence passing between himself and Mrs Hedges.

Mrs Hedges first wrote to Mr Russell on 3 October 2012. She complained about the unsuitability of new orthotics provided to her son by Mr Russell. Her son had sought alternative advice and treatment from a physiotherapist and a podiatrist and following discussions with them, she had returned to Andsell House. By that stage, Mr Russell had relocated to 11a Alexandria Drive, Lytham St Annes as a result of a fall out with the owner of the Andsell House clinic. In that letter, Mrs Hedges advises that she had been told that Mr Russell was not in fact HPC registered "***as has been advertised and which you apparently claimed to be. If this is indeed the case then I am very far from happy***". She refused to pay for the orthotics.

Mr Russell replied on 4 October 2012. His headed note paper described him as "Mark Russell Podiatry" and he signed himself off as a "Specialist in Podiatric Medicine". He noted that his first consultation with Michael Hedges had been on 27 January 2011 and that Mrs Hedges had been in attendance. He summarised Michael's medical history and his clinical opinion. He welcomed an opportunity to speak to the new clinicians working with Michael. He continued: "***You mentioned that you had returned to Andsell House Clinic and spoken to Mr (Goodwin) Edwards, the owner, who informed you that I***

***had been asked to leave the clinic because I was not HPC registered and had misled people to that effect". This is completely untrue. I have enclosed a notice that I have served on Mr Edwards following advice from the General Osteopathic Council who are investigating a number of serious complaints into his practice. I would urge you to read this in full and to read the various attachments that go with this notice, including my position on registration and regulation of my profession. I am sending you a copy of this letter and memo by email and I would also ask that read (sic) the links at the end of the notice".*** What this letter does not state or remind Mrs Hedges is that either Michael Hedges or his mother had been informed prior to or at the time of the first consultation that Mr Russell was not registered with the HCPC and was not entitled to use the designated titles he was in fact using. We have no doubt that if Mr Russell had informed either Mrs Hedges or her son about this lack of registration and use of designated titles, then he would have highlighted the giving information to them in this letter. Whilst the treatment was outside the summons period, it demonstrates that certainly at the very least, Mrs Hedges was in the dark about Mr Russell's position.

Mrs Hedges responded on 10 October 2012. She repeated and expanded her complaints about her son's orthotics and set out what she had been told about the reasons for Mr Russell leaving the clinic.

Mr Russell responded on 1 December 2012. Having summarised a conversation he had had with Mr Richardson, Michael's physiotherapist, Mr Russell went on: "***I have to say that I was very relieved to hear that, for if it had been the case that another health professional had made the statements you allege then you can be certain that this case would have now been referred to the Fitness to Practice Panel at the HCPC".*** He concluded: "*... if you are still unhappy may I suggest you make a formal complaint to the Fitness to Practice Panel at the HCPC – and although I am not currently a registrant I would be happy for them to adjudicate on this matter as I will be*

***re-registering at the conclusion of my legal challenge. Please let me know if you wish to do so and I shall make all my records, including our correspondence and the transcript of my telephone call with Mr Richardson available to them".***

Attached to that letter was also an invoice for the same date. The letter head states "Mark Russell Podiatry" and again he is described as a Specialist in Podiatric medicine.

This letter is within the summons period. It is the prosecution case that firstly, to sign himself off as a Specialist in Podiatric medicine, infers that he is entitled to use that title and that is an implicit deception. The same applies to the letter heading "Mark Russell Podiatry". Secondly, to make reference to a possible referral to the fitness to practice panel of the HCPC in the event that Mr Richardson had concluded that Mr Russell's treatment of the complainant's son had been sub-standard, infers that Mr Russell fell within the jurisdiction of the HCPC, which of course he did not because he had not registered and thus was not entitled to use the protected titles he was using in that letter. This again amounts to an implicit deception. Mr Russell must have known that a complaint to the HCPC would have come to nought at that stage because he was not registered. Indeed this was one of the reasons he gave for not re-registering with the HCPC – that is, that those who were not registered were not subject to the same rules of conduct and disciplinary procedures as those who were registered.

Finally, whilst not within the charging period, the HCPC relies upon Mr Russell's blog which is at pg 56 of the bundle. In it, he sets out the reason why he has de-registered from the HCPC and it is clear that he understood the implications of registration and de-registration. If one used a title other than podiatrist or chiropodist, a practitioner could provide foot care without being regulated or disciplined. He described his conduct in continuing to use the

designated titles as a "blatant breach of the legislation". At pg 64 of the bundle under the heading "Sans Regulation" posted in June 2012, Mr Russell confirmed that he continued to use the title podiatrist "in clear breach of the regulation – as only those who subscribe to the register are entitled – legally – to use the name". He invited a prosecution.

It is the HCPC case that whilst it may be that Mr Russell feels a sense of injustice about the fact that titles are protected rather than functions and that this may well be a motive for him conducting himself in the way that he has, he must also be aware that there is a risk that members of the public would mistakenly believe that he was entitled to use the titles. Further, there is another motive for doing so. He received referrals from GP's via health insurance companies. An example is found in the bundle – an invoice addressed to Standard Life Healthcare for £960. Mr Russell must have been aware that if he did not use the protected titles whilst he conducted his campaign, then it was unlikely that insurance companies would accept him as an appropriate treatment provider for their clients. In simple terms, he wanted his cake and he wanted to eat it – he wanted to continue practicing at the same level as he had done before and for the same clients but was not prepared to call himself something other than a podiatrist or chiropodist.

So, turning to Mr Russell's case. He told us that he was 54 years of age and presently unemployed. He went through his qualifications and confirmed that he was of good character.

Andsell House was a multi-disciplinary practice. Mr Russell joined as a self employed chiropodist, renting a room and sharing the secretarial services provided. There was a secretary, Susan Swarbrick and a practice manager, Jacqui Rawcliffe.

The practice either invoiced or took cash payments. Invoices were issued because the cases were more complex or because an insurance company was paying. He estimated that only a dozen out of 200 or 300 patients had invoices raised. He did not advertise and relied upon word of mouth recommendations. He had a case load of 2,700 patients when he stopped practising.

His dispute with the HCPC arose in 2007. He was concerned that the new legislation did not provide sufficient safe guards for patients against those who provided foot care but who were neither qualified or entitled to use the designated titles. Nor did the legislation safeguard practitioners against malicious and false complaints. His repeated written concerns were not responded to by the Registrar and his attempts to effect regulatory change by a political route had failed so when the new registration fee of £74 was introduced, Mr Russell decided not to pay it in an attempt to prompt some response from the registrar which did not materialise.

So, when he de-registered in 2008, he did not advise his patients immediately of his de-registration and when he did so, he only told those who he thought should know. He wrote to those with capacity and all new patients. There were 2 or 3 patients he did not inform about his de-registration but he did not withhold the information with intent to deceive.

He also told Consultants and GPs and insurance companies of his deregistration and as a result he lost work from insurance providers.

Mr Russell produced two pro-forma letters which he said he had sent to GP's and patients both dated 10 September 2008. He did not produce any copy letters to demonstrate that such letters had in fact been sent.

As for the practice website, he gave instructions to remove any references to HCPC registration. However, it was out of his control. He issued 2 or 3 requests to Jacqui Rawcliffe to remove the offending words.

It took about 5 months to change the Andsell Clinic letter head to remove "HPC registered". During this time, he continued to use the stationary and if he thought about it, he would scribble those words out but if he failed to do, again that was without intention to deceive. The letter head changed in February 2009.

Mr Russell did not advertise and so did not think that there would be any other references to him being HPC registered. He did not realise that Wesham Road Runners were advertising his services. He had sponsored one of their races in 2006. He was not responsible for their site. The court can state at this stage, that we accept Mr Russell's explanation in respect of this advert.

He did however continue to use the designated titles. He thought that his publicly proclaimed deregistration would be embarrassing to the Registrar and that this would provoke a response from him. It did not and he has continued to use the protected titles without any intention to deceive.

He worked at Andsell House until March 2012. There was a falling out with the owner. Mr Russell said it was because Mr Goodman Edwards was stealing money. Mr Russell went to Alexander Drive and it was at this time that he started his blog. If anyone read that, they would have no doubt what Mr Russell's position was. He had made it clear that he was not registered.

As for Mrs Hedges, it was quite clear that someone had told her that he was not registered with the HCPC and that this was what motivated her complaint which had not been resolved.

Mr Russell denied that he had ever intended to deceive anyone by continuing to use the designated titles. No one had complained about him being de-registered or that they had been deceived or misled by him.

Now in cross examination, Mr Russell accepted that on his own case, if he was to properly use the title "podiatrist" as he claimed he was entitled to do, the fair use would be "unregistered podiatrist". The court should state as a result of Mr Russell subsequently referring to this appeal on his blog, that in asking this question the HCPC was not making any concession that this approach would be lawful. The purpose of the question was to test Mr Russell's explanation for his conduct. Mr Russell said that his purpose in telling some of his patients with capacity that he had de-registered was so as not to mislead them. He did not put it in writing for them. He agreed that to specifically state that he was unregistered would have suited his political purpose – to expose the deficiencies in the legislation but it did not cross his mind to specifically state on invoices and letter headings and the like that he was "de-registered". He wishes now that he had taken out a full page advert in the Times.

He agreed that whilst he wished to highlight the deficiencies in the regulatory regime, he also wished to continue to make a living whilst de-registered. **He was not therefore prepared to stop calling himself a podiatrist.** He had discussed his position with Andsell Clinic and no concerns were expressed that if he advertised himself as unregistered, that might discourage patients. There was one practitioner in the practice who did emphasise that he was registered with the HCPC although Mr Russell did not say the type of practice his colleague had.

He accepted that before de-registration, he would refer to his registration with the HCPC on paperwork, letters and the like. He denied that he did that to emphasise his status because most patients would not know what the HCPC was.

He agreed that when reference to Mr Russell being registered with the HCPC was removed from the letter headings, the remainder of the terminology could also have been changed for example his titles. And whilst the phrase "HPC registered" remained on the letter heading and the website – that was untruthful. The truth was "unregistered" and he did describe himself in that way on occasion.

He accepted that when x-ex in the Magistrates Court, he had agreed that there was a small risk of patients thinking that, as a result of him using the designated title of podiatrist, he was registered with the HCPC. He denied that he had made this concession in the context of new patients coming to see him at his clinic. He maintained that he had made the concession in relation to people reading his blog. He did not necessarily accept that a new patient when making their first appointment walking through the door prior to meeting Mr Russell would think he was registered. If they had been referred by a GP, the GP may have told the patient that he was not registered. And as for existing patients, he told most of them either in writing or orally that he was no longer registered. He agreed that there he would have issued invoices and receipts during the period covered by the summons but he denied that when he produced a bundle of invoices at the Magistrates Court, the bundle did not cover the summons period. Mr Holland asserted otherwise. Mr Russell agreed that on all of the invoices he had produced in the lower court, he had described himself as a podiatrist or a specialist in podiatric medicine.

He was taken to the 2009 Andsell Clinic website page which described Mr Russell as HPC Registered Chiropodist/Podiatrist. He agreed that members of the public would appreciate the difference between registered and unregistered but he had not included his registration number details on the web page.
He was taken to the letter sent to him on 4 December 2009 from Alan Shillabeer warning him that it was a criminal offence for a person, with intent

to deceive to represent falsely (whether expressly or by implication) that they are on the HPC register or to use and/or to use a title protected by the 2001 order. He agreed that he had received the warning, what he had not appreciated was the implications of the prohibition.

He agreed that he had received Mr Shillabeer's follow up letter dated 7 January 2010 requesting confirmation that Mr Russell would stop using the protected titles and to remove any impression from the clinic website that he provided chiropody/podiatry and he accepted that he had responded to confirm that he would request the web hosting company to remove the words "HPC registered".

Mr Russell accepted that Alan Shillabeer wrote on 20 April 2010, addressing some of Mr Russell's concerns about the investigating committee's powers and processes and confirmed that the 2001 order protected titles rather than functions. He noted that the website remained unchanged and that the stationary used by Mr Russell to correspond with him referred to chiropody and podiatry services and described Mr Russell as a State registered chiropodist and podiatrist. The criminal offence was again set out. Mr Russell accepted in cross examination that someone may have been misled by the website and the stationary but that was not his intention. He denied that his motivation for continued use of the designated titles and reference to "HPC registered" was financial.

Mr Russell accepted that in July 2010 he was considering re-registration because he realised he was not getting anywhere. But his mother was admitted into a hospice and so his dispute with the registrar was not foremost in his mind.

And as for the letter of Mr Shillabeer dated 17 Sept 2010 in which he refers to Mr Russell's indication that he was going to re-register, Mr Russell denied in

cross examination that he had in fact told Mr Shillabeer that he was going to re-register despite the file note to that effect made by Mr Shillabeer in July 2010.

Mr Russell acknowledged that Mr Shillabeer had again referred to the criminal offence in his letter of 17 Sept 2010 and asserted that no one understood the implications of the phrase "with intent to deceive". Everyone thought that the offence was one of strict liability and as this was the understanding of the entire profession, the Registrar had in fact perpetrated a deception on the profession. Mr Russell maintained that he did not understand the wording of the offence despite the fact that he had taken an avid interest in the legislation and had lobbied the Scottish Parliament on it and that when he was a member of the Society of Chiropodists and Podiatrists, he had been a member of the Legislative Affairs Committee and in that role, he had scrutinised the legislation. Further he did not read any of the letters sent to him referring to the criminal offence as being warnings about his conduct. He denied that he had ever indicated that he would stop using the designated titles despite Ms Bull's email dated 28 May 2011 to the contrary.

And as for the letter from Ms Bull dated 5 April 2012 headed "prosecution warning" again setting out the criminal offence, the phrase "with intent to deceive" was lost on him. He had not appreciated that it was being suggested that he was deceiving anyone by his conduct.

When his letter dated 18 April 2012 was put to Mr Russell, in which he asserted that "I have not intentionally deceived or mislead anyone" he denied that this demonstrated that he understood the meaning of "intention to deceive" or that he understood the nature of the criminal offence and his blog demonstrated that he thought that it was a strict liability offence.

He was asked to consider the standard life invoice dated 8 December 2009. This too had been forwarded my Debbie Gahan soon after the date of the

invoice. He denied that the invoice came from him. He had never treated a patient with Standard Life cover. He would remember an invoice for £960 and had never received a cheque in that sum. The largest invoice he had issued was for £400 or £500 at most. He pointed out that there appears to be a typographical error in relation to either the date of the initial consultation or the day surgery. He was aware that other documents had been forged or spitefully changed by someone with a grievance with him as a result of the fall out at Andsell Clinic although the fall out post dated this invoice. He had not contacted Standard Life to get to the bottom of this issue and he accepted that if the invoice was genuine then it contradicted his evidence that he had ensured that all GP's and health insurance providers were not misled about his registration and his right to use the PT's.

He accepted that it was only on day 3 of the appeal hearing that he asserted for the first time that this document was false even though it had been in the bundle before the Magistrates. He attributed his failure to not having been represented in the Magistrates Court although he had required other documents to be removed from the document bundle upon the basis that they were forged. He had however stated in the Magistrates Court that he had never worked for Standard Life. We will revert to this document in due course.

At the time of his de-registration, there were only two insurers which would permit referrals to him and he contacted them by phone to see if they would continue to refer patients to him if he was de-registered. They would not. He did not see the need to contact them in writing and he has no record of these conversations. If he had realised that he was going to be prosecuted, he would have kept notes and had them verified but he did not think that the Registrar would be so stupid to prosecute him as Mr Russell had a justifiable complaint about public safety. He thought that if he was prosecuted, he could explain to the magistrates court and get an absolute discharge. He denied that he had set out to commit the offence in order to be prosecuted and in any event, he had

not deceived anyone. He accepted that in his letter dated 18 April 2012 that he would very much welcome a court hearing and he accepted in cross examination that he wanted his day in court.

He was asked about the position of unregistered practitioners with regard to professional indemnity insurance. Mr Russell maintained that his insurers, Barrens, were aware that he was not registered and were unconcerned. He denied that he had simply renewed his insurance without the need to complete a new form but did not have a copy of the new form. He told the court that the insurance is in fact generic and irrespective of practice and he went onto aver that in fact Mr Russell when practising did not need insurance.

He accepted that he did not have any documentation addressed to patients, colleagues, insurance providers, health insurers or GP's which would confirm that he had informed them of his de-registration. As for GP's he would often meet them on the golf course and being aware of his position, they would wish him luck as the issues he had with the HCPC were shared by doctors as their functions are not protected, only their titles. He denied that GP's would not refer patients with insurance cover to him if they knew he was not registered. He accepted that he could have created a generic document which he could have circulated to all those who needed to be informed about his position but he only expected to be de-registered for a few weeks. He did not in fact tell anyone about his de-registration until December 2008 because at first he did not want to cause embarrassment to the registrar. It was only when it was clear that the registrar was not going to engage with him that he started to notify people of his position via a public narrative.

He was asked about the letter he sent in response to the Hedges complaint dated 1 December 2012. He agreed that his suggestion that Mrs Hedges report him to the fitness to practice panel of the HCPC was a suggestion to do the impossible. However, even in December 2012, he was planning to re-register

or at the very least, he was perhaps going to re-register. (We note that this contradicted his statement made in his letter of 17 August 2012 addressed to Lee Tearle that he did not have any intention of re-registering until the Registrar had addressed Mr Russell's concerns). He appreciated that Mrs Hedges was concerned about her son's treatment and Mr Russell would have been more than happy for her to complain to the HCPC and the complaint then to lie on the file until he had re-registered. He stated that it was up to him when he chose to re-register. He appreciated now that the HCPC would not even entertain a complaint if he was not registered. He had however, informed her son of his battle with the HCPC.

Mr Russell averred that if he were to return to practice in the future he would re-register. He knew in December 2012 that a prosecution was on the way but it had been bad manners on the part of the registrar not to respond to his correspondence and he was not going to pay his £74 without an acknowledgment from the registrar. And that remained the case until he ceased to practice in December 2013. Following the magistrates court hearing, the HCPC had posted a defamatory notice on the internet which published the outcome of the hearing. It referred to the "intention to deceive" element of the offence. He stated that the prosecution counsel at the magistrates court had lied to him about the offence and that the summons did not include the words "with intent to deceive". It was for that reason that he was permitted to vacate his plea. He considered that the whole profession had been deceived by the HCPC. He had lost his practice and lost £250k as a result of the notice posted by the HCPC.

No one had confronted him asserting that they thought he was registered when he was not, apart from Mrs Hedges of course.

He denied that he had continued to use the designated titles because he needed to continue to practice. People trusted him.

On 22 April 2016, Jacqueline Rawcliffe was called on behalf of Mr Russell. She was the Administrator of the Andsell Clinic between January 2006 and 2011. She worked with Susan Swarbrick as a job share and they were jointly responsible for the reception and the phones, issuing invoices and determining how the income of the various practitioners were distributed between the practitioners and the owner.

Mr Russell started with the clinic in 2006 and left following a big fall out with Mr Goodman Edwards over the cost of room rental in 2012. Mr Russell considered that he was being overcharged. The fall out was not because Mr Goodman Edwards was accused of stealing money.

But it was in August or September 2008 that Mr Russell announced that he was not going to renew his registration and he gave his reasons. He asked that the notice of his registration be removed from the website and the headed paper. This happened most of the time but they may have used old invoices as templates for new invoices which referred to his registration by mistake.

The website was constructed by Jan Dulay and despite numerous requests to do so, he did not remove references to Mr Russell's registration with the HCPC. He did make some amendments but he did not remove the reference to Mr Russell's registration beneath his photograph. Dulay was contacted by the staff, Mr Goodman Edwards and Mr Russell to no avail.

Mr Russell would discuss the issue of his registration regularly. She overheard him speaking to his clients about it but she could not recall the words he used. She did not think that Mr Russell was keeping the fact of his de-registration from anyone. She was unaware of the steps Mr Russell may have taken to inform GP's and insurance providers of his position.

As for the Standard Life Invoice dated 8 December 2009, she could not say who had issued the invoice. The procedure code was for nail surgery. The fee was high as invoices for that type of procedure were usually in the region of £180. She could not recall whether Mr Russell had received referrals from Standard Life although he did not do much insurance work. But having considered it, she said that she did not use procedure codes on invoices. She accepted that the purpose of the invoice was to generate a cheque payable to Mr Russell and that if paid, it would have been dealt with in the normal way by the administrators. When this invoice was generated, Mr Russell was on good terms with Mr Goodman Edwards. Mr Russell had not instructed her to contact insurance providers to inform them of his de-registration.

Now Ms Rawcliffe confirmed that when she was asked to arrange for the changes to the website, she was not asked to make a reference to the fact that Mr Russell had chosen to de-register. The end result was that the website and the headed documentation were silent as to whether he was registered or not.

She recognised that the correct approach would have been to provide a flyer to give to all existing and new clients. Mistakes were being made with the invoices and Mr Russell was described as being HCPC registered on the website. She was not asked to do anything to correct any false impressions caused as a result. She agreed that any professional would assume that the designated titles being used by Mr Russell were being used correctly and that without correction, that would have been misleading.

She considered Mr Russell to be a very honest person who was well respected at the clinic and throughout the community.

Well then we heard from James Glassbrook, Mr Russell's solicitor. Following the hearing on 8 December 2015, his firm had attempted to investigate the

Standard Life invoice. Standard Life was now trading as Vitality and, to cut a long story short, no assistance or information was provided about it. It was the defence case that the invoice was a forgery. Mr Glassbrook accepted that he could have issued a witness summons to serve on the relevant person at Vitality but had not done so. It then emerged that the cover letter or note that accompanied that copy invoice sent by Debbie Gahan to the HCPC indicated that the purpose of forwarding it in 2009 was to demonstrate that Mr Russell was "clearly still calling himself a podiatrist". Apart from that, no further light was shed upon the invoice.

We agree with Mr Howath's description of this invoice as an oddity. It is not suggested that it was fabricated by or on behalf of Standard Life and Mr Russell's explanation for its existence being his poor relationship with Mr Goodman Edwards does not withstand scrutiny because Ms Rawcliffe confirmed that relations between the two men were good in 2009. However, there are considerable questions marks hanging over it and having considered all of the evidence on this matter, we have agreed to disregard the invoice from our consideration.

Susan Swarbrick

Also started work at the clinic when it opened in 2006. She recalled that Mr Russell stated in about 2008 that he was going to de-register from the HCPC because unqualified people were practicing and the HCPC was not providing the professions with security. She was instructed to make sure that any reference to HCPC be removed from documentation and the website.

We then heard from two character witness: Gillian Thompson, a retired bank officer who spoke highly of Mr Russell as a man of integrity and high moral purpose and Dr. Janet Pollock, a GP practising in Blackpool who considered Mr Russell to be capable and professional as a podiatrist. Both character witnesses had been past patients of Mr Russell. There were a further 9 written

character references mainly from podiatrists who all speak positively and highly of Mr Russell as a professional colleague. Of course, the fact that Mr Russell is of good character is something that the court does take into account when determining the issues in this case but the weight we attach to it in the circumstances of this case is limited bearing in mind our conclusions about Mr Russell as a witness.

The court's considerations

Our starting point is the submission made on behalf of Mr Russell that he was in fact entitled to use the designated titles irrespective of his failure to be registered. It was submitted on his behalf that he has in fact been prosecuted under the incorrect sub-paragraph of paragraph 39(1) of the 2001 Order. The summons should have been in respect of paragraph 39(1)(a) as he is not registered.

We disagree. Whilst Mr Russell asserted otherwise during the course of his evidence, we are satisfied that he is not entitled to use the designated titles unless he is registered with the HCPC. Sub-paragraph (a) relates to false representations about registration. Mr Russell has not falsely represented within the summons period that he is registered. He did that outside the offending period. (b) relates to the use of the titles, which use is dependent upon registration. We are satisfied that the HCPC have identified the correct sub-paragraph applicable to Mr Russell.

It is therefore convenient at this stage to deal with the issue of whether Mr Russell genuinely believed that he was entitled to use the titles without registration. Mr Russell has embarked on a course of conduct to challenge the Registrar of the HCPC. We are satisfied that it is a misconceived challenge because it does not highlight the deficiencies of the system he complains about, that is, the ability of those who are not registered with the HCPC to undertake the functions of Podiatrists and Chiropodists providing they do not use the

designated titles. Mr Russell maintains that he has determined that the appropriate way of highlighting this deficiency in the regime is to continue to call himself a podiatrist and/or chiropodist but fail to register which is not the mischief he wishes to address. His approach is nonsensical. Be that as it may, we must consider whether do does genuinely believe that he can use the designated titles without registration and on this point, his declarations have been inconsistent. He has declared that by continuing to use the designated titles he is in "breach of the regulations" (putting aside an intent to deceive) and yet in evidence he has averred that he has a right to use the titles. We repeat that he is an intelligent man and we do not accept that he genuinely believes that he can use the titles without registration. We have had the benefit of observing and listening to Mr Russell give evidence. He has not impressed us as a witness. We regret to say that we have concluded that his answers to difficult questions have been unbelievable. By way of example, his averment that his insurance provider is not even concerned about the nature of a practitioner's practice when providing insurance cover and that as a result, once he failed to re-register, there was no need to inform his insurer that he was no longer registered. In short, his insurance provider did not in fact know what he did for a living! That explanation was nonsense. Having considered his evidence and demeanour in court when giving evidence, we have no doubt that Mr Russell appreciated and understood the regulatory regime and that he knew and knows that he has no entitlement to use the designated titles without registration as he has previously and correctly declared.

The next issue is whether Mr Russell appreciated the true import of paragraph 39(1) of the 2001 Order in that it involved an intention to deceive. We repeat that Mr Russell is an intelligent man. He had been a member of the Legislative Affairs Committee of the Society of Chiropodists and Podiatrists and had taken a great deal of interest in the proposed regime and the legislation. But even if that had not armed him with the requisite knowledge, the numerous letters setting out the full criminal offence sent to him by the HCPC and then by their

solicitors would have done. And we have no doubt about that because Mr Russell would write back and aver that his conduct was not accompanied with an intention to deceive. He has been disingenuous to say the least in the course of his evidence in stating that he did not appreciate the true import of the criminal offence and that it involved an intention to deceive. His written responses to the HCPC are self-explanatory. We find that his evidence on this point is incredible and not worthy of belief.

So, turning to the element of the offence which is really the issue in this case, that is whether Mr Russell conducted himself in the way he did, with an intent to deceive, we agree with Mr Holland's submissions on the point.

We accept that Mr Russell was motivated to act in the way that he did because of his "campaign" as he sees it against the HCPC and this caused him to conduct himself in a manipulative and misleading way. He has certainly manipulated the HCPC by, for example, declaring that he has decided to cease using the designated titles and then failing to do so; by declaring that he would apply to re-register and then failing to do so. But we are satisfied that his continued use of the designated titles was also to ensure that he could continue to earn a living as a poditrist. If he had had no intention to deceive, the simple answer would have been to make clear on his paperwork that he was unregistered with the HCPC and that he had no entitlement to use the designated titles but was nevertheless doing so. He did not do that and we are satisfied that without that qualification, his use of the designated titles was with intent to deceive those who were unaware of his position, that he was entitled to use them.

The documentation before the court that is within the summons period relates to Michael Hedges. His standard letter heading describes Mr Russell as "Mark Russell Podiatry" and he signed himself off as a specialist in podiatric medicine. Neither statement was qualified in any way on the documentation.

It can be inferred that the letter heading and title was routinely used in correspondence during the summons period and was misleading to anyone who has not been told of Mr Russell's position as already found by this court.

Mr Russell maintained in evidence that he had in fact told Michael Hedges of his position in relation to the HCPC and the use of the titles and as a result there was no intention to deceive him by Mr Russell describing himself in the way he did. The first point arising out of this averment has already been touched upon in this judgment which is this: if that were the case, then why did Mr Russell not say so in his correspondence with Mrs Hedges rather than sending her documentation and a link (presumably to his blog) for her to consider on 4 October 2012? Why not say "but I explained my position with your son, who was my patient"? The second point is that Mrs Hedges was in fact with her son during the first consultation and again Mr Russell did not say in his correspondence that she was told of his position during that consultation. It is clear that she took a very keen interest in her son's podiatric health because he was hoping to become a professional golfer. We are satisfied so that we are sure that if Mr Russell had provided either or both of them with the information necessary for them to realise that Mr Russell was not entitled to use the titles by reason of his failure to register with the very body which regulates the profession, then he would have said so. Of course that conduct or omission was outside the summons period as the treatment took place in 2011 but Mr Russell continued to use the designated title of Podiatrist and did so in corresponding with Mrs Hedges within the summons period.

The letter of 1 December 2012 sent by Mr Russell is audacious and misleading to say the least in relation to his position. First of all, he continued to use the designated title without qualification or explanation on his headed note paper. Secondly, he referred to his ***"legal challenge on the regulation of the podiatric profession"*** when he had no such "challenge". "Challenge" denotes a positive step being taken. He was simply failing to pay his registration fee and writing

a blog in which he criticised the Registrar and the regime. But the most important part of the letter is the concluding paragraph inviting Mrs Hedges to make a formal complaint to the Fitness to Practice Panel of the HCPC which again mentions his "legal challenge". In inviting Mrs Hedges to complain to the HCPC it is implicit that Mr Russell was maintaining that in some way he was within its jurisdiction when he was not, irrespective of registration. His reference to his "legal challenge" was meaningless and deceitful because the reality was that he was simply waiting for the registrar to decide to take criminal proceedings and in view of the length of time the issue of his registration and use of titles had dragged on, there was no reasonable prospect of the matter being determined promptly or at the very least in a reasonable period of time. The last paragraph was, we find, a textbook case of "smoke and mirrors" and we have no doubt that Mr Russell was intending to mislead Mrs Hedges into believing that she could legitimately make a complaint to the HCPC when he knew that this would have been a waste of her time. He was prepared to invoke the jurisdiction of the HCPC when it became necessary to do so in the same way that he used the designated titles to mislead and deceive those who had not been told of his position, that he was entitled to use them. He did so, so that he could continue to earn a living as a podiatrist.

In conclusion, we find that a breach of paragraph 39(1)(b) of the 2001 Order is proved.

Delivered on 29 June 2016.