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hcpc health & care
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Chair: Elaine Buckley

Chief Executive and Registrar: Marc Seale

Mr Mark Russell
25 Westby Road
Lytham St Annes
Lancashire
FY8 2EJ

17 August 2016

Dear Mr Russell

I am writing with reference to your letter dated 15 August 2016 addressed to Elaine Buckley. Please find enclosed a letter that we have today sent to your MP. I trust this clarifies the position.

Marc Seale

Marc Seale
Chief Executive and Registrar

Enc

Chair: Elaine Buckley

Chief Executive and Registrar: Marc Seale

Mark Menzies MP
House of Commons
London
SE1A 0AA

17 August 2016

Dear Mr Menzies,

Mark Russell

Thank you for your letter dated 8 August 2016, enclosing a note from your constituent, Mark Russell.

Mr Russell has been corresponding with us since 2008 and, to the extent that he claims to have been unfairly prosecuted for raising a concern about the safeguarding of members of the public, I can confirm that is incorrect.

The HCPC's main objective is to safeguard the health and well-being of the people who use the services of health professionals registered with the HCPC; and one of its functions is to ensure that those professionals are fit to practise. The statutory scheme provides for this by designating certain professional titles which may only be used by persons registered with the HCPC.

Mr Russell's registration with the HCPC lapsed on 1 August 2008, following which the HCPC received complaints of him continuing to practise using the designated title of podiatrist and/or chiropodist. The HCPC made contact with Mr Russell, inviting him to re-register or risk prosecution. Mr Russell indicated that his failure to renew his registration had been motivated by his grievances with the regulatory regime and that he did not intend to re-register unless the HCPC confirmed that it would address the deficiencies in the legislation. As you will know and was explained to Mr Russell, this

is a question for government, not the HCPC, which can only operate within the powers conferred on it by the legislation.

Mr Russell declined to cease using the titles or re-register, and indicated that he would welcome prosecution as it would provide him with a platform from which to continue his campaign for reform of the regulatory regime. Accordingly, and reluctantly, the HCPC commenced a prosecution against Mr Russell under Article 39(1)(b) of the Health and Social Work Professions Order 2001, which provides that "a person commits an offence if with intent to deceive (whether expressly or by implication) ... he uses a title ... to which he is not entitled".

Mr Russell pleaded guilty to the offence at Westminster Magistrates' Court on 11 November 2013. He was fined £270 and ordered to pay a victim surcharge of £27 and costs of £5,789.70.

Following his conviction, he applied to have his guilty plea vacated, claiming he had not properly understood the constituent elements of the offence, namely the reference to "with intent to deceive", when entering his guilty plea. The application was granted, meaning that Mr Russell had to be prosecuted again, this time with him pleading not guilty.

In January 2015, following a two day hearing at City of London Magistrates' Court and West London Magistrates' Court during which he gave oral evidence, Mr Russell was found guilty and convicted once again. He was fined £200 and ordered to pay a victim surcharge of £20 and costs of £800.

Mr Russell appealed to the Crown Court. After four days of legal submissions and evidence, including lengthy oral evidence from Mr Russell, the Crown Court dismissed the appeal on 29 June 2016. He was ordered to pay costs of £1,000.

In delivering judgment on behalf of the Bench, Her Honour Judge Beach described aspects of Mr Russell's evidence as "*inconsistent*", "*unbelievable*", "*nonsense*", "*incredible*" and "*not worthy of belief*". She also made the following observations about his character and conduct:

- "*Mr Russell is audacious and misleading to say the least*";

- *"His reference to his 'legal challenge' was meaningless and deceitful because the reality was he was simply waiting for the registrar to decide to take criminal proceedings";*
- *"We find a textbook case of 'smoke and mirrors'";*
- *"We have no doubt that Mr Russell was intending to mislead [the complainant]".*

In answer to the specific issues raised, I can confirm:

- Mr Russell was prosecuted, only after numerous warnings, for the criminal offence under Article 39(1)(b). Given our statutory objective, we were left with little choice but to pursue the prosecution in view of Mr Russell's defiance. Mr Russell was not prosecuted for "raising a concern".
- Mr Russell was found guilty by both the Magistrates' Court and the Crown Court. On the evidence before it, the Court was satisfied beyond reasonable doubt that Mr Russell was guilty of the offence.
- The HCPC has never sought to conceal the "intent to deceive" element of the offence. It was spelt out to Mr Russell in numerous warnings before prosecution. (HHJ Beach described Mr Russell as *"an intelligent man"* and found that he *"could not have been in any doubt ... about the particulars of the criminal offence"*, after the precise wording of the criminal offence was communicated to him by one of our case managers in 2009).

In short, Mr Russell's conviction and the consequences for him are entirely self-inflicted. Regrettably, as a result of the manner in which he conducted himself, the criminal case has also been of considerable expense to the HCPC, and thereby the law-abiding registrants who fund the HCPC, who have had to bear the burden of upholding the law in this case.



Marc Seale
Chief Executive and Registrar