94 Woodlands Road

Ansdell

Lytham St Annes

FY8 1DA

07980733684

[www.mark-russell.net](http://www.mark-russell.net)

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Mr Mark Menzies MP

House of Commons

Westminster

London

Dear Mark

**Health & Care Professions Council**

Thank you for a copy of Philip Dunne’s letter of 30th November 2017, which I have considered carefully over the Christmas break.

You wrote to Jeremy Hunt on 19th October and asked him specifically to seek evidence of disclosure from the HCPC regarding the offences contained in the Health Professions Order 2001 and in particular, the impact that the “intent to deceive” condition has on the use of designated titles under the Order. You also enclosed my case summary, which requested the same and explained the reasons why.

It deeply regrettable that the Minister responding has remained silent on this matter. Instead he states that it is *inappropriate* for the Department to comment on individual cases as the HCPC is an *independent* regulator. In the first instance, can I remind the Minister that the HCPC is a *statutory* regulator and is thus directly responsible to Parliament. However, there is another reason why this position is rather disingenuous.

The “intent to deceive” clause was added to the misuse of title offences in the legislation by the Blair government in order to attract a higher fine scale, a political prerogative at the time. Unfortunately it creates a lacuna – circumstances where unregistered use of title is perfectly lawful – and this posed an immediate problem for the Department and both regulators – the HPC and NMC – when it was realised what the implications were.

I understand there is a MoU agreement between the respective parties that sets out the public policy on this matter. Can I ask that the Secretary of State urgently familiarises himself with the contents?

The policy allowed both regulators to remain silent of the circumstances that permit unregistered use of title. No explanation of the necessity of the ITD element was ever advanced to the professions, registrants or public. And for good reason.

The inclusion of the ITD clause effectively rendered the public safeguarding aspect of the regulation completely impotent. An individual struck-off the register for serious misconduct could still practice using a designated title providing they complied with the legislative provision in the Order. To do so, they need only have one publicly accessible notice in a waiting room or website stating clearly they are not registered, with or without a reason why. I made this discovery thanks to the prosecution, but the department officials and Registrars were fully cognisant of this from the outset.

No professional body or patient organisation would have accepted that position, had it been divulged at the time.

Further, disclosure would also have seriously threatened the viability of the regulators who were now self-funding and heavily reliant on registrant fees across the professional spectrum to meet projected costs. This included established registrants in private practice and also tens of thousands of new applicants from this sector, made eligible for registration under the grandparenting scheme. Had full disclosure been made, a significant number of individuals might not have opted for statutory regulation and that would have created a funding risk.

These are the considerations that determined policy.

It is four years now since you made the first of several representations to the Secretary of State and other Ministers on my behalf concerning this matter. On each occasion, the Government has refused to intervene for the same reason given by the Minister in his letter.

It is a decade since I first raised a concern with the regulator regarding the dangers of unregulated practice in my profession and since then I have done nothing wrong; morally, professionally or legally. I was prosecuted for the simple reason that I also posed a risk. By very publicly using a title without registration I was inadvertently and unknowingly exposing the lacuna the regulator had strived to conceal since its formation.

The HCPC and its agents were unable or unwilling to disclose the necessary provisions of the legislation to me at any time, which is deeply regrettable given what transpired. Had we had an honest and forthright conversation at the outset, I would have been perfectly amenable to a constructive, confidential dialogue providing I had reassurance that my concerns would be addressed.

Instead, I’ve been misled, lied to, had my personal and professional reputation trashed, threated then subjected to four years of criminal prosecution that have cost me my practice, home, savings and pension.

Given the collusion between their department officials and the HCPC, I reject any suggestion that the Government has no responsibility in this matter and I would ask that the Secretary of State carefully considers the foregoing and conducts his own enquiries.

I am not, however, prepared to wait another three months for a response. If I do not hear back from Government within the next ten days, I shall forward a case file to the DPP, Alison Saunders, and ask her to review the circumstances and conduct of the prosecution. I will also release the same information to the media and all relevant parties as this is clearly of public interest, particularly if the Government tries to distance itself further now.

This has been a thoroughly disagreeable and distressing experience that has not provided me with much confidence in our regulatory, legal or political institutions, particularly where safeguarding of the public and protection of “whistleblowers” are concerned. It represents a dishonest and shameful excursion by people who really ought to have known better. I look forward to proposals to conclude the issues raised in previous correspondence without further delay.

I would be grateful if you could forward this reply for Mr Hunt’s attention at your earliest convenience.

Best wishes for 2018.

Yours sincerely

Mark Russell