Mr Mark Russell

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Criminal Cases Review Commission

5 St Philip’s Place

Birmingham

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Dear Sirs

**Health & Care Professions Council (HCPC) –v- Russell**

I would be very grateful for your assistance in appealing my conviction in the above case.

Between May 2012 and June 2016, I was subject to two separate prosecutions by the HCPC for an offence under Article 39.1.b of the Health Professions Order (HPO) 2001. The offence concerns misuse of a “protected” title, specifically ‘chiropodist’ and/or ‘podiatrist’.

In the first prosecution, I pled guilty in the belief I had broken the law. I then successfully appealed the conviction at the Central Criminal Court, when I discovered that in fact I wasn’t in breach of the legislation and had been misled by the Prosecution, who had deliberately failed to disclose the scope of the offences properly. This ‘appeal’ was by way of an application to vacate my plea on the grounds my original plea was equivocal. It was upheld by HHJ Timothy Pontius.

I was then prosecuted a second time under the same summons, where I was convicted at the Magistrates Court and appealed it to the Crown Court, where the verdict was eventually upheld.

The Crown Appeal concluded in June 2016, nineteen months ago. I am now in a position to offer new evidence to the Court that will overturn this verdict.

I have enclosed your application form and a number of documents and correspondence that will be relevant to your consideration.

The central issue of the case is a clause prefixing the offences in the HPO legislation that requires an individual must act with “an intent to deceive” in conjunction with title misuse. This essential ingredient of the offence was never disclosed to me by the Prosecution at any time whatsoever. It was never disclosed to the professions, registrants or public by the regulator or Department of Health since the legislation came into force in 2003.

The impact that the ITD clause has is substantive. It creates a lacuna that defeats the very intent behind the offences; it permits an individual to lawfully use a ‘protected’ title without current registration providing there is no intent to deceive. In safeguarding terms, someone subject to a striking-off order can still lawfully continue in practice using a title as long as they make it clear they are no longer registered.

This has never been acknowledged by the HCPC or Government, until recently.

Since the Crown Appeal concluded, I have endeavoured to unearth any evidence of disclosure in relation to this clause.

During cross examination in the Appeal, I told the court that the regulator had deliberately concealed this important information and that I couldn’t possibly have known about the full provisions of the Order as there had never been any guidance notes or policy orders that explained this position.

The prosecuting QC told the Court that suggestion was “nonsense” and the regulator had never concealed the circumstances that permit unregistered use of title conferred by the ITD requirement. The Prosecution allege that “I must have known” – and the Judge, HHJ Beech, agreed. You will note from the enclosed Judgement, that was material in her deliberations.

However, it is absolutely not the case. There have been no advisory notes, guidance or policy orders issued by the HCPC to its registrants or the professional bodies to that effect. No one could possibly have been aware of the full scope of the regulation – and for good reason.

The HCPC and Department of Health have been aware of the difficulties posed by the ITD clause since the legislation was published in 2003 – long before I raised my concerns and eventually prosecuted. From the enclosures you will discover that the agreed policy between those parties, was to remain silent on the impact of the clause, whilst promoting a public position of absolute closure of title.

The considerations that determined the eventual policy were political and financial, but a consequence of non-disclosure was the HCPC falsely misrepresented the lawful position regarding title use, compelling 60% of its registrants to submit to statutory regulation when they could have opted otherwise, had they been properly advised.

I have provided two papers detailing the prosecutions and the circumstances that led to this unfortunate business. Also enclosed is the correspondence and FOI requests that demonstrate non-disclosure. My constituency MP has written to the HCPC several times requesting evidence where the regulator has divulged the scope of the offences fully. He has been rebuffed each time.

I have also enclosed the HCPC’s Prosecution Policy for your consideration. One covers 2004-2016 and the other from August 2016 is current. Can I invite you to contrast the number of times “an intent to deceive” is mentioned in both documents?

You may also wish to consider the fluidity of the Registrar’s position on use of titles in the recent correspondence, in particular his replies to the Chair of the Health Committee and to my M.P. Whilst an accurate position of the provisions and powers in the legislation is always welcome, it should have been revealed to me as an accused/defendant at the outset of this case.

I was a practising podiatrist for over thirty years when this prosecution started. I think I’m of good character and reasonably well respected in my profession and more importantly, by my patients. I raised a legitimate concern about public safety with this regulator, which was never acknowledged or responded to. That was unsatisfactory and the eventual outcome, even less so.

My sentence on conviction was a fine of £200 plus £1,000 in costs, however you will also note from the enclosures what the consequences of this prosecution have been for me personally and professionally. That is also unacceptable.

I would very much appreciate your help in disposing of this case appropriately in the Higher Court.

Yours sincerely

**Mr Mark Russell**