

**Health Professions Council**  
**Council – 2<sup>nd</sup> March 2005**  
**Protection of Title/Prosecutions Policy**

## **Executive Summary and Recommendations**

### **Introduction**

The Council's Scheme of Delegation, approved by Council on 7<sup>th</sup> December 2004, delegated the prosecution of offences under Article 39 of the Health Professions Order 2001 ("the 2001 Order") to the Chief Executive and to the Director of Fitness to Practise, but subject to any prosecutions policy established by the Council.

This paper sets out the prosecutions policy which the Council is recommended to adopt.

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

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

Article 39(4) provides for separate offence of fraudulently procure the making, amendment, removal or restoration of an entry in the register 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 authorised person. Panels have issued witness orders and the Fitness to Practise team have used their Article 25 powers on a number of occasions in the recent past but to date there is a high level of compliance.

The transitional ('grandparenting') arrangements for the professions which HPC regulates, other than Operating Department Practitioners, will end on 8<sup>th</sup> July 2005. After that date, HPC will be able to prosecute individuals for using a title to which they are not entitled. It is therefore particularly important for Council to determine what the prosecutions policy should be.

Prosecution of criminal offences can be difficult and, as it must be shown that a protection of title offence was committed with an intention to deceive, need to be supported by compelling evidence which can be expensive to gather. In addition, HPC would need to ensure that any investigation was conducted to the same standards that apply to police forces and would need to comply with the disclosure requirements of the Criminal Procedure and Investigation Act 1996.

The focus of protection of title enforcement should be directed at prevention and encouraging compliance (and, more importantly, continued compliance) rather than isolated prosecution, although clearly prosecution should be used where necessary if other methods of securing

compliance fail. This will ensure that the resources available to HPC are used to their best effect.

The policy that the Council is therefore recommended to adopt is as follows

- that enforcement activity in relation to protection of title should be focused on prevention;
- that all necessary steps should be taken to secure continued compliance with the relevant provisions of the 2001 Order;
- that, in the first instance, suspected offenders should be given an opportunity to explain any alleged offence;
- that, where conduct which may be an offence under Article 39(1) or (3) is established, the person concerned should be served with a 'cease and desist' notice and required to give an undertaking to comply with the relevant provisions of the 2001 Order;
- that, if these steps fail, action will be taken to prosecute.

It should be reiterated that, although prosecution is the last resort, this does not mean that the Council will not prosecute if all other steps have been taken.

### **Decision**

The Council is asked to approve the prosecution policy

### **Background information**

None

### **Resource implications**

A further staff member may need to be appointed to manage this function. The HPC is increasingly being advised of possible offences and Eve Seall in the Fitness to Practise team has created a database to log this information.

Further, it has become increasingly necessary for the FTP team to use their Article 25 powers. As yet, there have been no cases of non-compliance.

### **Financial implications**

As noted above, prosecution is expensive.

### **Background papers**

### **Appendices**

Article 39 to the HPO2001  
Health Professions Council Scheme of Delegation

Kelly Johnson 16<sup>th</sup> February 2005

<b>Date</b> 2005-02-22	<b>Ver.</b> a	<b>Dept/Cmte</b> F2P	<b>Doc Type</b> POL	<b>Title</b> Prosecutions Policy	<b>Status</b> Final DD: None	<b>Int. Aud.</b> Public RD: None
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