

GCC code of practice for criminal investigations and prosecutions under the Chiropractors Act 1994

July 2012

GCC code of practice for criminal investigations and prosecutions under the Chiropractors Act 1994

1. This Code governs the conduct of investigations and the decision on whether to prosecute suspected criminal offences under the Chiropractors Act 1994 (the Act).

The overriding objective

2. The overriding objective of the General Chiropractic Council (GCC) in conducting a criminal investigation or bringing a criminal prosecution is to protect, promote and maintain the health and safety of the public.

Background

3. Qualifying as a chiropractor demands a long period of study and practical training. The GCC imposes high standards of education, conduct and performance on the chiropractors registered with it. To protect the public, the Act makes it a criminal offence for anyone other than a registered chiropractor to use the title “chiropractor”, “chiropractic practitioner”, “chiropractic physician”, or any other kind of chiropractor. The Act also makes it a criminal offence to fail to comply with any requirement imposed by the Professional Conduct Committee (PCC), the Health Committee or an Appeal Tribunal hearing an appeal from the Health Committee. As a general principle, the Act aims to protect the public from unregistered persons who are not bound by the GCC’s standards, as well as from dishonest individuals who mislead people as to their registration status.
4. The Council for Healthcare Regulatory Excellence stated in its report *‘Protecting the Public from Unregistered Practitioners’*, published February 2012, that *“Patients and the public recognise health professional titles because they indicate competence and fitness to practise. There is a risk to patient safety and public protection when unqualified people pass themselves off as registered professionals. Health professional regulators have a duty to ensure protection for patients and the public, and tackling title misuse is an important part of this.”*

Statutory framework

5. Section 32 of the Act creates two categories of criminal offence, all of which are summary offences (which means they can be dealt with only by Magistrates Courts).
6. First, in the interests of protecting the public from unqualified people, Section 32(1) makes it a criminal offence for any person whether expressly or by implication to describe himself or herself as a:
 - a. chiropractor
 - b. chiropractic practitioner
 - c. chiropractitioner
 - d. chiropractic physicianor
 - e. any other kind of chiropractor

unless he or she is a registered chiropractor.

7. Second, Section 32(2) makes it an offence for any person without reasonable excuse to fail to comply with any requirement imposed by:
 - a. the Professional Conduct Committee
 - b. the Health Committeeor
 - c. an Appeal Tribunal hearing an appeal from the Health Committee.

Procedure

Stage 1: Initial screening

8. The GCC will entertain allegations whether verbally or in writing and whether anonymous or from a named individual. On receipt of such an allegation the Registrar (or a person nominated on behalf of the Registrar) will consider whether to consult other agencies in relation to the matter including another regulator or the police. Secondly, the Registrar will decide whether or not the allegation potentially falls within the Section 32 (1) of the Chiropractors Act 1994. In arriving at this decision, the Registrar may contact the suspect ie. the person who is the subject of the allegation, any person who has made the allegation (the informant) and/or any third party.

9. If the Registrar decides that the GCC should not consider issuing criminal proceedings, the Registrar must notify the informant (if known) of this decision and the reasons for this decision.
10. If the Registrar decides that the GCC should consider issuing criminal proceedings, the Registrar must deal with the allegation in accordance with the following paragraphs.

Stage 2: Investigation

11. The Registrar shall investigate the allegation by gathering evidence, including through the instruction of enquiry agents and external lawyers in appropriate cases.

Stage 3: Decision on prosecution

12. In deciding whether to prosecute, the Registrar must consider whether there is sufficient evidence for a prosecution (the evidential test) and whether a prosecution is required in the public interest (the public interest test). Only where the Registrar is satisfied both that there is sufficient evidence and it is in the public interest to prosecute should proceedings be commenced. The Registrar must have regard to current guidance regarding these tests, as contained within this Code and in the relevant Code for public prosecution in:

- England & Wales, the Code for Crown Prosecutors issued by the Crown Prosecution Service
- Scotland, the Prosecution Code issued by the Crown Office and Procurator Fiscal Service
- Northern Ireland, the Code for Prosecutors issued by the Public Prosecution Service of Northern Ireland.

13. The Registrar must at all times have regard to the GCC's overriding objective of protecting, promoting and maintaining the health and safety of the public. This might result in the Registrar deciding that the GCC should not issue proceedings even where the allegations are serious or sensitive.

The evidential test

14. The Registrar may determine to issue criminal proceedings only where there is sufficient evidence for a realistic prospect of conviction against each suspect on each charge.

15. In assessing the evidence, the Registrar must have regard to the following factors:
- a. Whether it is more likely than not that a properly directed tribunal will be satisfied to the criminal standard of proof that the suspect committed the alleged offence
 - b. What the suspect's potential defences might be, whether general or specific, and how these defences might affect the prospects of conviction
 - c. Any potential for any of the evidence to be excluded by the court, whether on the grounds of technical inadmissibility or on other legal grounds including abuse of process or breach of the Human Rights Act 1998
 - d. The reliability of the evidence, including the credibility of the witnesses and any conflict in the evidence
 - e. The possibility of any further evidence becoming available.

The public interest test

16. Even where there is sufficient evidence for a realistic prospect of conviction, the Registrar may not issue proceedings unless the public interest requires a prosecution.
17. The question for the Registrar is whether a prosecution is necessary to serve the interests of the public, not whether a prosecution would serve the interests of the chiropractic profession. In considering this issue, the Registrar must have regard to all the circumstances of the case, including details of the offence, the circumstances of the suspect and the impact of the offending behaviour on the health and safety of the public. The effect on a profession's commercial interests is not a relevant factor.
18. The following is a non-exhaustive list of factors that might be relevant to the public interest:
- a. whether the offending activity is ongoing or has ceased
 - b. the length of time over which the offending activity continued
 - c. whether the offence was committed intentionally or as a result of a mistake or misunderstanding
 - d. whether the offending is likely to be continued or repeated
 - e. whether a member of the public was harmed or put at risk of harm by the offending
 - f. whether the person harmed, or put at risk or harm, was vulnerable by reason of age or infirmity

- g. whether a prosecution is likely to have an adverse effect on the victim's physical or mental health
 - h. whether the prosecution is likely to have a significant effect on maintaining public confidence in the profession or in deterring others from committing an offence
 - i. whether the offending involved a breach of trust or abuse of position
 - j. whether the suspect has a previous conviction or other adverse finding, including a finding by a regulator
 - k. whether the suspect has breached an undertaking to the GCC or another body, or has declined an opportunity to provide an undertaking
 - l. whether the suspect was warned prior to committing the offence
 - m. whether the suspect is likely to be subject to a regulatory investigation, particularly for similar or related activities, whether by the GCC or another regulator
 - n. whether the suspect is likely to be subject to a separate criminal investigation, whether by the police or another prosecuting agency
 - o. whether the court is likely to impose no penalty or a nominal penalty.
19. The above factors are not all of equal importance, and the relative importance of a factor will be determined by the individual circumstances of each case.
20. In deciding whether the public interest test has been met, the Registrar must make an overall assessment in the light of all the circumstances. A prosecution might not be in the public interest even where there are a number of factors pointing towards prosecution.

Recording the decision on whether to prosecute

21. Following the decision, the Registrar may:
- a. write to the suspect, including asking the suspect to cease the alleged activity and desist from continuing or repeating such activity
 - b. take other informal action, including asking the suspect for an undertaking
 - c. notify the informant (if known) and any other parties of the decision
 - d. report the matter to another agency
 - e. conduct such further investigation as might be appropriate

- f. institute a prosecution by laying an information in the Magistrates Court.

Delegation and Consultation

22. The Registrar may delegate any or all of the above functions to the Head of Fitness to Practise and/or such other person as the Registrar considers appropriate.
23. The Registrar or delegate, whether or not legally qualified, may at any stage consult any additional sources, including obtaining specialist legal advice.
24. A decision that might (in the opinion of the decision maker) have major implications for the GCC, must be made or endorsed by the Registrar and must be notified to the Council Chair as soon as possible. Council will receive a report on criminal investigations at every closed meeting.

Further information

25. For further information, please contact the:
General Chiropractic Council
Office of the Registrar
Park House
186 Kennington Park Road
London
SE11 4BU

Tel: 020 7713 5155
Website: www.gcc-uk.org
Email: chiefexec@gcc-uk.org



General Chiropractic Council
Park House
186 Kennington Park Road
London
SE11 4BU

Tel: 020 7713 5155
Website: www.gcc-uk.org
Email: enquiries@gcc-uk.org