

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 June 2018**  
**SC(18)JUNE05 – Interim Drugs Guidance**  
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## **1 ISSUE**

1.1 Further to the discussion on business planning at the last Council meeting, this is the consideration of a statement on applying the existing Drug Offences guidelines to drugs which are not specifically named in those guidelines, primarily Fentanyl and other synthetic opioids.

## **2 RECOMMENDATION**

2.1 That the Council agrees to the publication of the statement at Annex A as the first step in revision of the drug offences guidelines.

## **3 CONSIDERATION**

3.1 At the May meeting, Council discussed issuing a statement on how to apply the existing guideline to drugs which are not explicitly named in the assessment of harm in current guidelines. This follows public and police concern about the increase in use of synthetic opioids, particularly Fentanyl. These drugs have a potency many times that of heroin (100 times in the case of some Fentanyl products). Whilst the courts may not see these drugs very frequently, their approach to dealing with them is clear; as set out in the cases of *R v Boayke and Others [2012] EWCA Crim 838*, and *R v Healey and Others [2012] EWCA 1005*, the quantity of drugs is only indicative of the appropriate category. The court needs to seek evidence from experts as to their potency and the equivalent harm of one of the named drugs.

3.2 In April the CPS released guidance for crown prosecutors on how to deal with these drugs at sentencing. The guidance advised prosecutors to bring to the court's attention the evidence of the impact of the offending on the community, the particular dangers of even small quantities of Fentanyl, and the evidence of an expert witness setting out how the drug equates to more familiar drugs, for example, 1 gram of Fentanyl is the equivalent of XX grams of heroin. Prosecutors are advised to use this to show the court which sentencing range within the current guideline is appropriate.

3.3 In light of these concerns and the prosecution guidance, we therefore propose to put up the following brief statement on our website, similar to that put out in July last year in relation to possession and use of acid and corrosive substances. This statement is aimed at

sentencers, but also at the press and wider public, to make it clear that the current guidelines do cover all these controlled drugs.

The Drug Offences Guideline came into force in 2012 and we have recently published [\[link\]](#) our assessment of the impact of that guideline. The guideline covers the main possession, supply, importation and production offences in the Misuse of Drugs Act 1971.

For most of the offences, the guideline uses quantity of drugs as the key element of assessing the harm caused by the offence, with higher quantities indicating higher harm. The current guideline covers all drugs included in the Misuse of Drugs Act 1971. However, as indicators of the level of harm, the guideline gives the indicative quantities of only the most common drugs: heroin, cocaine, ecstasy, LSD, amphetamine, cannabis and ketamine.

For example, for the offence of supplying or offering to supply a controlled drug, if the drug is amphetamine, 20kg would put the offence in the most serious category whereas if the drug is heroin or cocaine, only 5kg would be needed to put the offence into that category. The Council intended, and case law has clearly shown, that where the drug in question is not listed in the guidelines, the assessment of harm will be based on the equivalent level of harm caused by the relevant quantity of that drug.

Since publication of this guideline, there has been an increase in the number of cases before the courts involving newer drugs, such as synthetic opioids, which may have much higher potency and potential to cause harm than more common drugs. These newer drugs are covered by the guideline but not specifically listed in the section on assessment of harm. The approach to assessing harm in these cases should be as with all cases of controlled drugs not explicitly mentioned in the guidelines; courts should seek advice of expert witnesses to assist in determining the potency of the particular drug and the equivalence of the quantity in the case to the quantities set out in the guidelines in terms of the harm caused. For example, in a supply cases as above, if the quantity of the drug would cause as much harm as 5kg of heroin, the offence would be in the most serious category.

Recent CPS guidance [\[link\]](#) means that prosecutors will be providing courts with this information and expert evidence to ensure that the court can make a correct assessment of harm in cases involving drugs not explicitly listed in the guidelines. This is likely to include evidence on the potency of the drug in question, and the value of sales, along with evidence on the wider harm caused to the community as well as to the drug users and others immediately affected in the case.

***Question One: Does the Council wish to publish this statement on its website as soon as possible?***

3.4 When we published the statement on corrosive substances, we explained what we were going to do next, by publishing the Bladed Articles guideline. If we publish the above statement on drugs after the Business Plan, we can include reference to the fact that we are now reviewing the drugs guideline. If we publish the statement before the Business Plan, we could give an indication of further work in this area without giving details.

***Question Two: When does the Council wish us to publish the statement? If we publish before the Business Plan, does the Council wish to indicate that we will be reviewing the drug guideline more fully?***

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