

Features

The Rise of Synthetic Cannabinoids (“Spice”) and their Impact On The Prison Estate

By Joe Stone, QC¹

Spice - Defined and Effects

Spice is the brand name of various herbal smoking products sometimes erroneously known as “legal highs”. It is one of a number of products containing novel psychoactive substances (NPS), specifically synthetic cannabinoids. However, Spice has also become a common term for synthetic cannabinoid smoking mixtures in general not just those branded as “Spice”. Synthetic cannabinoids are chemicals designed to mimic the effects of THC (Tetrahydrocannabinol), the main psychoactive compound in cannabis.

In 2015, samples analysed from online vendors and 10 prisons found the most commonly identified synthetic cannabinoids were 5F-AKB-48 and 5F-PB22.² The majority of the substances recorded were found to be mixtures of more than one different compound.

In England and Wales an initial popular brand of synthetic cannabinoid was Spice. The original version (JWH-018) was banned in 2009. Common brand names at present are Annihilation, Hipster, Green Joker, Kronik, Pandoras Box Reborn and Vertex Space Cadet.

There have been few scientific studies into the effects of synthetic cannabinoids and none at all for some compounds, therefore much of the information about effects comes from anecdotal reports. User reports range from effects similar to cannabis, with pleasant feelings of relaxation and happiness, increased appetite and increased sociability to feeling ill, uncomfortable and anxious. Hallucinations, visual distortions, confusion and memory loss have also been reported. Users have also experienced vomiting, headaches, rapid heart rates, loss of coordination, inability to control their bodies, stupor and breathing difficulties. In high doses or in susceptible individuals synthetic cannabinoids have been associated with paranoia and aggressive behaviour.

Many synthetic cannabinoids are more potent than cannabis and this, coupled with the lack of information about the dose present in NPS products, means that it is easy for users to take high doses and suffer unpleasant effects. The effects manifest rapidly after smoking, reports suggesting usually between 5-15 minutes, and the “high” can last anywhere from one to 12 hours depending on the compound and dose although most users report the effect lasting for about four to six hours.

Why is Spice a problem on the Prison Estate?

In a recent HM Inspectorate of Prisons report³ the nature of the problem was outlined:

NPS — synthetic cannabinoids have created significant additional harm and are now the most serious threat to the safety of the prison system that our inspections identify.

The most recent informed academic analysis on spice consumption has been carried out by a team based at Manchester Metropolitan University and the University of Manchester. In a detailed article entitled *Adding Spice to the Porridge - The development of a synthetic cannabinoid market in an English Prison*⁴ the team reported on research conducted into an adult male Category B prison (unidentified) from May to October 2015 which involved in-depth interviews with prisoners and staff, observations of prisoner-led focus groups, workshops and restorative justice circles involving discussion of synthetic cannabinoid use and markets; and analysis of routinely collected prison data measuring drugs seizures, incidents of violence and incidents of self-harm.

The Manchester team findings

The Manchester team found that, because of the huge profit margins on their resale, there was now a flourishing market in synthetic cannabinoids – to the point where their sales are eclipsing those of cannabis and heroin. They also found that these substances are finding their way into prisons not only by the traditional routes, such as the post, prison visits, corrupt prison staff and by being thrown over prison walls, but by new methods: drones, or by spraying the substance in liquid form onto books, letters and children's drawings. As regards the impact synthetic cannabinoid markets in this setting are having upon prisoners, the prison system and the wider criminal justice system, the research uncovered:

...strong evidence that the licence recall system - a cornerstone of offender management, intended to act as a deterrent and motivation for offenders to change their behaviour - is routinely and systematically abused to bring synthetic cannabinoids into prison.

The team also found that:

The consumption of synthetic cannabinoids also appeared to be affecting recovery journeys of prisoners, particularly when these substances were available on drug recovery wings. Furthermore the widespread consumption of synthetic cannabinoids impacted upon the physical and mental health of prisoners as well as their financial circumstances. Staff were increasingly required to respond to immediate issues associated with anxiety, depression and in some extreme cases, violence and psychotic episodes which in turn created a culture of apprehension prison staff. The findings offer support for the suggestion that the recent steep rise in seri-

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² Home Office 2015 - *Annual Report on the Home Office Forensic Early Warning System (FEWS) - A System to identify New Psychoactive Substances (NPS) in the UK.*

³ HM Chief Inspector of Prisons for England and Wales: Annual Report 2014-15.

⁴ Rob Ralphs, Lisa Williams, Rebecca Askew and Anna Norton; *International Journal of Drug Policy* 40 (2017) 57-69; available online at: <http://www.sciencedirect.com/science/journal/09553959/40>.

ous violence, self harm and suicide in prisons can be attributed at least in part to the parallel growth in the consumption of synthetic cannabinoids.⁵

Conclusion - Abolition of Mandatory Drug Testing?

The Manchester team concluded that:

...the rise in synthetic cannabinoid use in custody and the size of the drug market are posing significant challenges to the management of offenders; including healthcare, appropriate drug detection techniques, licence recall and sanctions for both use and supply. The primary motivation for consumption in this setting is the avoidance of drug use detection and that this is likely to supersede other motivations for consumption in the future. We propose a revision of mandatory drug tests (MDT) both in prisons and in the management of offenders in the community.

The team argues for the removal of MDT for cannabis detection on the basis that:

... it has the potential to significantly lessen the demand for synthetic cannabinoids as a replacement for other detectable substances and thus significantly diminish the market and associated harms. In doing so users of synthetic cannabinoids may instead consume cannabis, a drug that

⁵ Citing the Annual Reports of HM Chief Inspector of Prisons for England and Wales 2013-2014, 2014-2015 and 2015-2016; *ibid*, *Changing patterns of substance misuse and service responses: A thematic review by HM Inspectorate of Prisons* (2015); Ministry of Justice Statistics Bulletin 28 April 2016, *Safety in Custody Statistics England and Wales Deaths in Prison Custody to March 2016, Assaults and Self Harm to December 2015*; and *Rehabilitation for Addicted Prisoners Trust, Research and Policy Briefings Series no.4-Tackling the Issue of New Psychoactive Substances in Prisons* (2015).

has the potential to cause far less harm to users and those around them.⁶

Of course, whether this would be politically acceptable remains a moot point. On the other hand, present systems are conspicuously failing and it is time for more imaginative solutions to be found.

The option of more sophisticated tests to find these NPS does not seem to be a panacea. Early forensic warning systems indicate that the compounds in NPS are constantly changing. Manufacturers are seen to simply replace banned chemicals with other often stronger more dangerous substances. As the Manchester team point out:

...the latest update from the European Monitoring Centre for Drugs and Drug Addiction identifies 160 new strains of synthetic cannabinoids in Europe alone since the original Spice was banned in the UK in 2009.⁷ Thus it is doubtful MDT's will keep pace with newly formed chemical structures. The investment in the development of MDT's capable of detecting synthetic cannabinoids is therefore a flawed and expensive strategy.

Clearly, a durable solution to this growing problem needs to be found.

[To be followed by a further article on the impact of Spice on defences raised at trial.]

⁶ See V Brakoulias (2012) "Products containing synthetic cannabinoids and psychosis", *Australian and New Zealand Journal of Psychiatry* - 46(3).

⁷ *Perspectives on drugs. Legal approaches to controlling new psychoactive substances*. European Drug Monitoring Centre for Drugs and Drug Addiction (2016).

Confiscation: An Update (Part 1 – Benefit, Realisable Amount and Proportionality)

By Polly Dyer¹ and Michael Hopmeier²

Introduction

As the practitioner will be aware, at a confiscation hearing, the court will make a finding as to (1) the defendant's benefit from criminal conduct (either general or particular) and (2) the realisable amount (how much money the defendant can realise). Pursuant to s.6(5) of the Proceeds of Crime Act 2002 ("POCA"), which was introduced by Sch.4, para.19 of the Serious Crime Act 2015, after doing so the court must also consider whether it would be disproportionate to require the defendant to pay the recoverable amount. This article provides an update on recent developments in confiscation case law, and will address each of these three stages in turn.

The calculation of benefit

In *McDowell & Singh*³ two appeals were linked together because of common features: (a) the defendants were sole directors and shareholders of companies; (b) they were convicted of offences of trading whilst they were unregistered

or unlicensed to do so; (c) the defendants claimed that trading generally was lawful – the criminal offences criminalised a failure to register or obtain a licence rather than the activity of trading per se; (d) it therefore followed, the defendants argued, that any benefit from "trading" was not a benefit from criminal conduct; and (e) any benefit from criminal conduct, the defendants argued, should be limited to a benefit from the discrete issue of failing to obtain a licence.

The Court of Appeal held that whether cases involving "regulatory offences" give rise to the availability of a confiscation order will depend upon an analysis of the statute which creates the offence. The question for the court is therefore whether the statute creates a prohibited act. If the offence creates a prohibited activity, which is carried out by the defendant, he will have benefited from crime. However, if the offence does not prohibit an activity, but merely regulates the way in which the activity can be carried out, then the defendant will not have benefited from crime by carrying out the underlying activity.

McDowell had been convicted of an offence relating to international dealing in military equipment, namely being "knowingly concerned in the supply, delivery, transfer, acquisition or disposal of controlled goods", contrary to the Trade in Goods

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³ [2015] EWCA Crim 173.