



**Law  
Commission**  
Reforming the law

# People who are unfit to plead\* at court

## A report by the Law Commission



\*Unfit to plead means a person is not able to take part in their trial.



An easy read version of  
**The Report of the Law Commission's  
unfitness to plead project.**  
January 2016



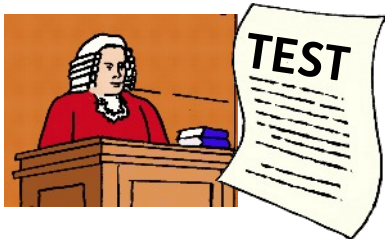
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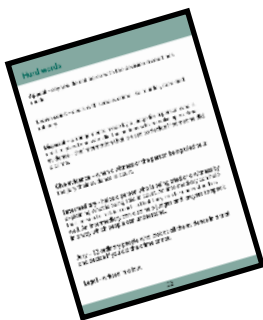
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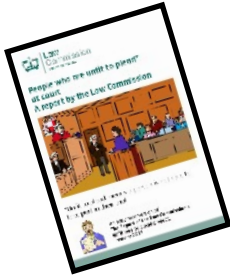


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Hard words are in **bold** and explained in this part.

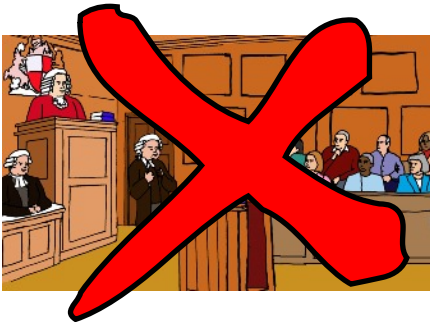
# 1. What this report is about



This is an EasyRead report about people in criminal courts who have been accused of breaking the law.



Some people accused of breaking the law do not agree that they did anything wrong. They must have a trial to decide if they did a crime or not.



You are **unfit to plead** if you are not able to take part in your trial.

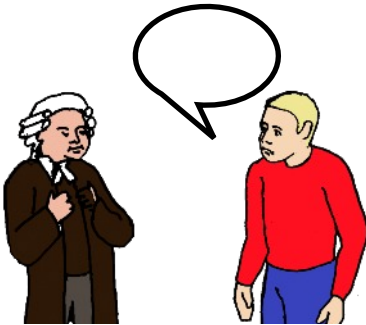


You might be **unfit to plead** because you are not able to:

- understand properly what the trial is about



- make sense of what is said in your trial



- tell your lawyers what they should do to help you, or



- tell your side of the story.



It is not fair for you to have a trial if you are **unfit to plead**.



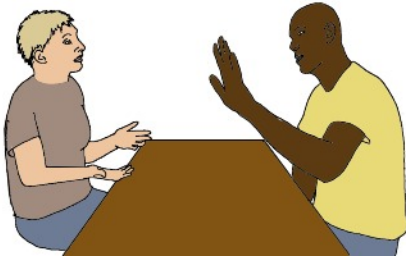
There are lots of different reasons why a person might be **unfit to plead**. The person might have:

- a mental illness





- a learning disability or a learning difficulty



- problems with other people understanding them, or



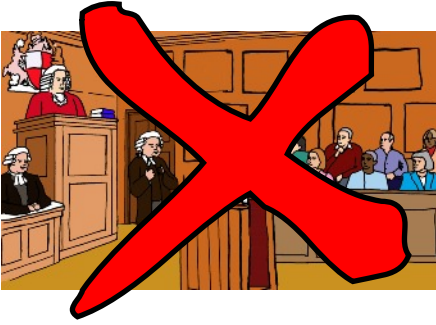
- problems understanding what other people are saying.



A person might be **unfit to plead** because of a number of different problems.



There is a test to decide who is **unfit to plead**. This means that the judge asks particular questions when deciding if someone is **unfit to plead**.



If a judge decides that a person is **unfit to plead** there is no trial.



Instead a **jury** decide what the person did, but not what the person was thinking at the time. This is called a fact-finding hearing.



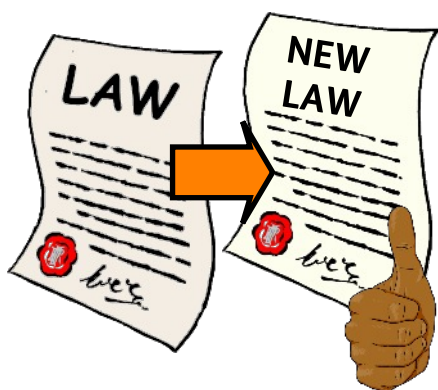
You cannot be found guilty of a crime at this sort of hearing. But the judge might afterwards decide that you should go to a hospital which is locked, or have some support in the community. This is called a **disposal**.



We think that the law does not always work well for people who are **unfit to plead**. Sometimes what happens to people who are **unfit to plead** is not fair.



We have talked with a lot of people about this. People have helped us to think about what needs doing to the law to make it work better.



We think the law should be changed. We have asked lots of people what they think of our new ideas. Most people agree with the changes which we think should be made.



This report tells you about the changes we think will make the law fair for everyone when a person is **unfit to plead**.





## 2. Helping people to have a normal trial when that is possible

We think a normal criminal trial is best for everyone, because:



- it is the fairest way to decide if someone was involved in a crime



- it is the best way to find out what really happened



- it allows both sides to tell their story, and it gives the judge the most choices for deciding what should happen to a person who has done a crime.



We think that people should be helped to have a normal trial if they are able to. We think that judges do not always know:

- who needs extra help at trial, and



- how best to help people.



People who are being tried do not have the same right to help as people who are involved as **witnesses**. They do not always get the support that they need for their trial.



We think that the way things are done in courts should be changed. These changes will make it easier for you to get help to understand and take part in your trial if you need it.



## Knowing who may have problems taking part in a trial

We think that judges and lawyers need training to understand who may have problems taking part in a trial. And to show them how trials can be made easier.

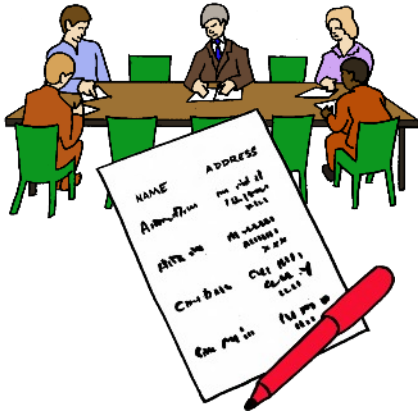
## A legal right to an intermediary



Trials can be very hard to understand. An **intermediary** can help a person who is being tried by explaining what is being said in court. An **intermediary** can help that person to talk in court so that they can be understood as well. An **intermediary** can also help judges and lawyers to speak in a way which people can understand.



We think that you should have the help of an **intermediary** during your trial if you need it. This should be a right, but only if you need the **intermediary's** help to be able to have a fair trial.



We also think that every **intermediary** who helps people who are being tried should have done proper training. They should also be supported to do that work. There should be a list of people who have the skills, training and experience to be an **intermediary** for people who are being tried.



## Using a videolink

Some **witnesses** in a trial can talk to the court from a different room, linked by CCTV to the courtroom.



People who are being tried can use videolink to give their **evidence**. But they do not have the same right as **witnesses** to do this. We think that people being tried should have the same right as **witnesses** to have videolink help at trial.

### 3. A new test to decide who is unfit to plead



The judge decides if you are **unfit to plead** by asking some questions. Lawyers call these questions the test for unfitness to plead.



We need a new test to decide who is **unfit to plead**. The one we use now is out of date. Since the test was decided on, the way trials work has changed. Scientists also know more about mental health, learning disability and communication difficulties.



We think that the test does not pick out all the people who are unable to take part in their trial. This means some people may be having unfair trials.



The test is also not written in a law. So it is not easy to find out what the test is. This means that not everyone is dealt with in the same way.



## A new test

We want there to be a new test which will check:



- if you can understand what crime you are supposed to have done



- if you can understand what evidence shows that you have done the crime



- if you can understand what it means to **plead guilty** and what might happen to you if you do



- if you can make decisions for yourself. Particularly if you can decide whether to plead guilty or not



- if you can follow what is said in court.

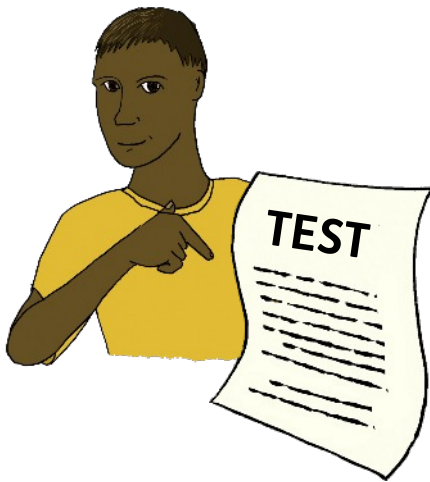


- if you are able to **give evidence** in court yourself.



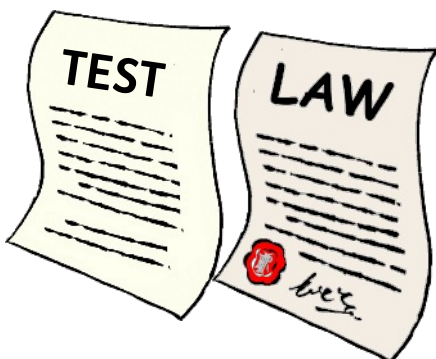
We want this to be called a test of whether you can “participate effectively” in your trial.

## **A test to decide if you are able to plead guilty**

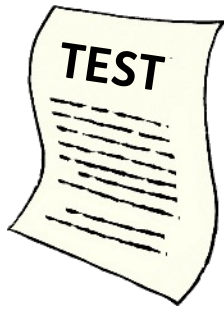


Some people are not able to take part in their trial, but know that they did the crime. We want there to be a test of whether you are able to plead guilty as well. We think this is important so that you can say you did the crime if you want to.

## **Tests set out in a law**



We think the new tests need to be set out in a law. This will mean that the tests are clearer. This will help to make sure that everyone will be dealt with in the same way.



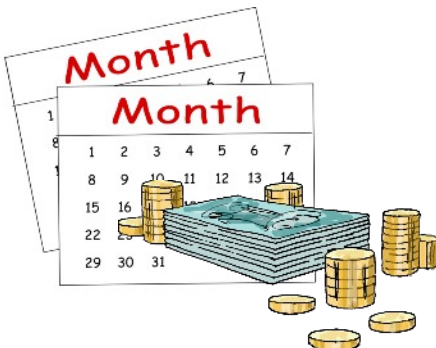
## 4. Using the tests to decide who is unfit to plead



Now a judge decides who is **unfit to plead**. The judge cannot decide that you are **unfit to plead** unless the judge has reports about you from 2 doctors.



For lots of people the judge also needs a report from a **psychologist**. But **psychologists** are not doctors. So the judge still needs the reports from 2 doctors as well.



This costs money and takes more time.



## Reports in the future

We think the law should be changed so that the judge needs fewer reports. This should save money. We also want decisions about whether you can have a trial to be made more quickly.



Most people we asked said the judge should not need two doctors' reports if the judge has a report from a **psychologist**. We think the law should be changed to let that happen.



People also said that a judge might be able to use a report from a learning disability nurse. This would be in place of one of the doctors' reports. So we will ask the Department of Health to decide what other professionals the judge could have a report from.

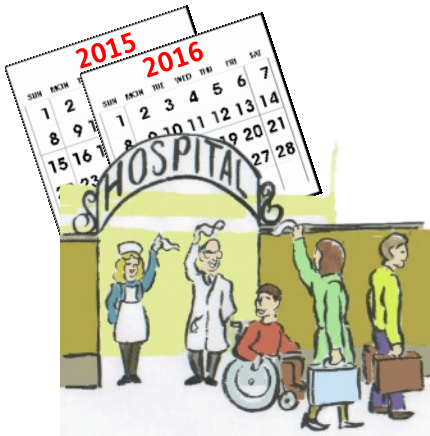


We also think that the court should try to get an assessment for you at court if that might be useful. This would help the court to decide more quickly if you are able to take part in your trial.



## Putting off the decision

Sometimes you may get better so that you can take part in your trial. This can happen if you have a mental illness that can get better with time. This needs to be talked about in the reports.



We think you should have a chance to get better before the judge decides if you are **unfit to plead**. We think that decision should be put off for up to a year. This should only happen if the reports say you might get better.



We think you should have treatment in a hospital if you need it to get better. The Mental Health Act will need to be changed so that you can stay in hospital for up to a year to have that treatment.





## 5. What happens to a person who is unfit to plead in the Crown Court



When you are found **unfit to plead** there is no trial. You cannot be found guilty of the crime.



A **jury** still hears all about what happened. This is called a fact-finding hearing. They have to decide what you did.



But the **jury** do not decide what you meant to do, or what you were thinking at the time. They just decide if you did the actions which make up the crime. You do not have to be in the court when this happens.



We think that this can be unfair. Sometimes deciding only what you did makes it difficult for the **jury** to know if you were really involved in a crime.



It can also be very difficult to split up what you did and what you meant by your actions.



If the **jury** decide that you did the actions which make up the crime, then the judge has to decide what to do next. The judge can say that you should be treated in a hospital which is secure, or have support from a **probation officer** or a social worker in the community.

## Not having a fact-finding hearing



We think a judge should be able to say no to a fact-finding hearing when you are **unfit to plead**. If the judge thinks this is a good idea, the judge should ask more questions before making the decision. This time the judge should ask:



- how serious the crime is



- how the **victims** of the crime will be affected by not having a fact-finding hearing



- what will be done to help you not do the crime again. And to support you living in the community



- what the lawyers think about there being no fact-finding hearing.

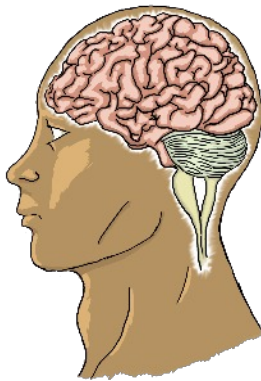
## Changing what the jury have to decide



We want the fact-finding hearing to be made fairer. We think that a person should have the same chance to be found not guilty in the fact-finding hearing as they would have in a normal trial.



So we think that the **jury** should decide at the fact-finding hearing the same questions that they decide in a normal trial.



## A special decision

Just sometimes the **jury** in a trial can say you did not know what you were doing. This was because you had something wrong with your mind at the time of the crime.



We think that needs to be a possible decision when you do not have a trial.

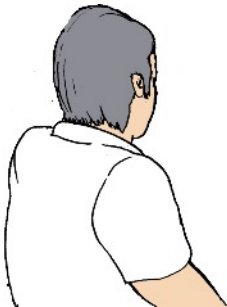
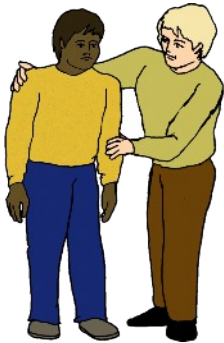


## 6. What happens when the jury decides you have done the actions which make up a crime?



At the moment a judge can choose from 3 things:

- sending you to a hospital which is secure
- give you a **supervision order**. This says you have to see a **probation officer** or a social worker
- do nothing.



We call these choices **disposals**.



If you did the actions which make up the crime of murder and are sent to hospital, the judge has to make a **restriction order**. That means that you cannot be let out of hospital without special permission from the government.





Sometimes the **jury** may decide you did the actions which make up a very violent crime or a sex crime. Then we need to protect the public from you. People from different organisations will work together to keep you and the public safe. They will be people like police and **probation officers**.

## Better supervision orders



We think that sometimes **supervision orders** do not work very well. Sometimes it is difficult to find a **probation officer** or social worker to work with you.



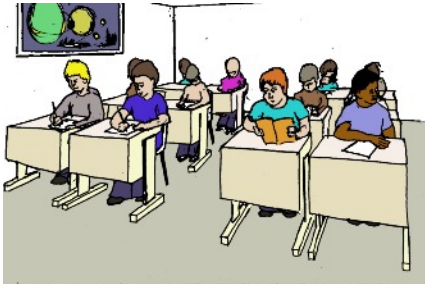
There is no way to check that a **supervision order** is working. Also **supervision orders** do not include support plans to help you live safely in the community.



We think it would be better if your Local Authority have to find a social worker to work with you on a **supervision order**. We think social workers are better at helping people who are **unfit to plead** than **probation officers**.



We think the **supervision order** should say you need meetings with this social worker. The **supervision order** should also be able to say that you should get the support you need for:



- education



- training



- getting a job



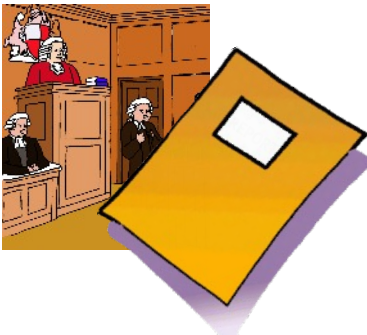
- finding the right place for you to live.



Some people need more help to stop them getting in trouble with the police again. So the new **supervision order** should also be able to say some things that you should not do.



The new **supervision order** will last 3 years.



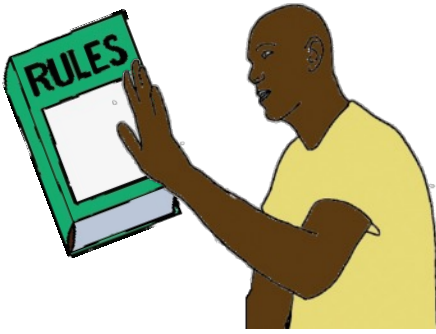
We think the court sometimes needs to see reports on how you are getting on with your **supervision order**. If you do not keep to the new **supervision order** the court can:



- put something extra into the **supervision order**. Like putting an electronic tag on you



- if you still do not keep to the **supervision order** the court can send you to prison.



You would only be sent to prison if the judge was sure you understood what you had to do for the **supervision order**. Also the judge would have to be sure that you had meant to break the rules of the **supervision order**.



We also think that the judge should have a choice about giving you a **restriction order** if you have done the actions which make up the crime of murder.

## 7. Magistrates' court and youth court



If you are accused of a crime which is not serious you will have your trial in a **magistrates' court**.



If you are a child or a young person under 18 years old you will most likely have a trial in a **youth court**. What happens in a youth court is meant to be simple to understand.



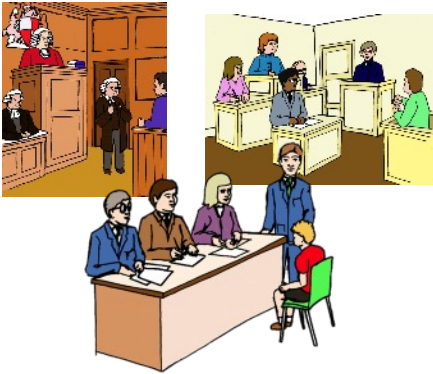
Different things happen if you have a problem taking part in your trial in a **magistrates' court** or in a **youth court**.



The judges in these courts cannot say that you are **unfit to plead**. They can stop the trial and say that nothing further should happen to you. Or sometimes the judges can send you to hospital or make plans for you to be helped by someone called a **guardian** in the community.



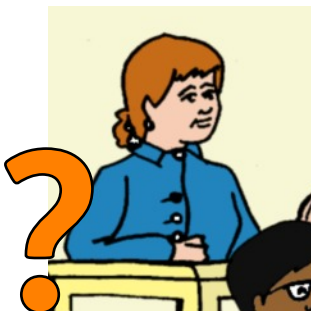
## All the courts should treat people the same way



We think that all courts should treat people in the same way if they have difficulty taking part in their trial. We think that the new test of whether you can “participate effectively” in your trial should be used in **magistrates’** and **youth courts** as well as the **Crown Court**.



We think that there should also be a test of ability to plead guilty in **magistrates’** and **youth courts**.



At the fact-finding hearing the magistrate should decide the same questions that they would decide in a normal trial.



In the **magistrates’** and **youth courts** the judge should have the same **disposal** choices as in the **Crown Court**. Except:

- they can only send you to a hospital which is secure when the crime has a prison sentence for it



- they cannot make a **restriction order** where they send someone to hospital, but can ask the **Crown Court** to do that, and



- they cannot send you to prison if you do not keep to the **supervision order**.

## Training for trials involving children and young people



All judges and lawyers who work on trials involving children and young people should have training. This training should teach them to understand which young people may have problems in court and how those young people can be helped.

## 8. Appeals



You can **appeal** against being found to be **unfit to plead** and against any of the decisions made by the court after that. You have to do this yourself, no one can do it for you. We think this might make it difficult for people who are **unfit to plead** to start an appeal.



If you said that the fact-finding hearing went wrong and the court agrees with you they must let you go. They cannot say that the fact-finding hearing should be done again. This could be dangerous if your crime was serious or violent.



### Changes

We think that the lawyer who helped you at the fact-finding hearing should be able to start an **appeal** for you.



If the court agrees that your fact-finding hearing went wrong, we think the court should be able to say that the fact-finding hearing can start again.



You should also be able to **appeal** decisions made by the magistrates and **youth courts** where you have been found to be unable to participate effectively in your trial.

## 9. Having a normal trial when a person gets better



Sometimes people who were **unfit to plead** might get better so that they can have a normal trial.



If that happens to a person who got a **restriction order** and is still in hospital then they can be taken back to court and have a normal trial.



Now this is only a choice for the **prosecution**. A person who is found **unfit to plead** cannot ask to be tried normally if they get better after they have got a **disposal**. We think this may be unfair.

### Changes



We think it should be possible for more people to be taken back to court for a normal trial if they get better after they have got a **disposal**.





We think a judge should decide if having a normal trial is the right thing to do.



We think the **prosecution** should only be able to ask for this if the person did the actions which make up a violent or sexual crime.



We think a person who has been given a **disposal** should be able to ask to have a normal trial. This should not depend on what sort of crime they were accused of. They should have to ask the judge if that can happen. The judge should decide whether this would be the right thing to do.

## Hard words

**Appeal** - say you do not agree with the decision a court has made.

**Crown court** - deals with serious crime like murder, rape and robbery.

**Disposal** – arrangements made by a judge for a person who is unfit to plead and who did the actions which make up a crime.

**evidence** - the information that is used to decide if someone did a crime.

**Give evidence** – when a witness or the person being tried tells the jury their evidence in court.

**Guardian** – a person given power by the court to make some decisions for a person with a mental disorder.

**Intermediary** - helps a person who is being tried or a witness by explaining what is being said in court. An intermediary can help that person to talk in court so that they can be understood as well. An intermediary can also help judges and lawyers to speak in a way which people can understand.

**Jury** – 12 ordinary people who look at all the evidence in a trial and decide if you did the crime or not.

**Legal** - written in a law.

**Magistrates court** - all court cases involving people who aged 18 or over start in a magistrates court. There isn't a jury in a magistrates' court. The Judges are lawyers or volunteers who are specially trained. Serious crimes are given to the Crown Court. Crimes that stay in the magistrates court are things like:

- most motoring offences
- damaging things
- being drunk and disorderly.

**Probation officer** - supports people who have been found guilty of a crime who are living in the community or who have come out of prison.

**Prosecution** – the lawyers who work with the police. They say in court that a person has done a crime.

**Psychiatrist** - is a doctor who works with people with mental health problems or learning disabilities. They can give you medicine.

**Psychologist** - works with people with mental health problems and learning disabilities or learning difficulties. They help by listening and talking.

**Restriction order** – this can be given by a judge to a person made when a judge sends a person to a hospital which is secure. A restriction order means that the person can only be let out of hospital with special permission from the government.

**Supervision order** - a court can give you this. It says you have to see a probation officer or social worker. It may say you have to live in a certain place or see a doctor.

**Unfit to plead** - people who are not able to take part in their trial.

**Victim** - someone who has had a crime done to them.

**Witness** - someone who saw a crime or who knows something about the crime that took place. The witness tells the police and may give evidence in court.

**Youth court** - a special type of magistrates' court for young people aged between 10 and 17. There isn't a jury in a youth court. People in youth courts use simple language and try to make it easy for young people to take part. Only people involved in the trial can be in a youth court for a hearing.



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