

Review into the Law and Procedures on Unfitness to Plead and Trials of Fact: Factsheet

1. The current position in Northern Ireland is founded on the common law Pritchard test, originally from the 1836 English case of R v- Pritchard but which has been developed by subsequent case law. The accused must be capable of carrying out six tasks if he or she is to be found fit to stand trial. The six tasks are:
 - understanding the charges;
 - deciding whether to plead guilty or not;
 - exercising his or her right to challenge jurors;
 - instructing solicitors and counsel;
 - following the course of proceedings; and
 - giving evidence in his or her own defence.
2. The various procedural aspects of the law are contained in the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order").
3. Article 49 of the 1986 Order sets out the procedure in relation to unfitness to be tried. It is a decision to be made by the court. The court shall not make such a determination except on the oral evidence of a medical practitioner appointed for the purposes of Part II of the 1986 Order by the RQIA and on the written or oral evidence of one other medical practitioner.
1. Article 49A of the 1986 Order provides for when it is found that the accused did the act or made the omission charged against them. The trial does not proceed against the accused, but a jury still is required to consider whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that they did the act or made the omission charged against them as the offence. Where the jury is not so satisfied, it shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion. Where the question of fitness to be tried was determined after arraignment of the accused, the determination as to whether they did the act or made the omission is to be made by the jury by whom they were being tried.

2. Article 50A of the 1986 Order applies where an accused is unfit to be tried and a jury finds that they did the act or made the omission charged against them. The options available to the court are to make:
 - an order that the accused be admitted to hospital; or
 - a guardianship order; or
 - a supervision and treatment order; or
 - an absolute discharge.
3. Where the court records findings that the accused is unfit to be tried and did the act or made the omission charged, Article 50A of the Mental Health (Northern Ireland) Order 1986 (“the 1986 Order”) requires the court to dispose of the case by a hospital order; a guardianship order; a supervision and treatment order; or an absolute discharge.
4. With regard to cases disposed of by a hospital order (Article 50A(7) of the 1986 Order) the 1986 Order allows the Department, upon notification that a person detained in hospital no longer requires treatment for mental disorder, to remit that person for trial. Upon remittal, the hospital order ceases to have effect.
5. There is no basis in the 1986 Order for remittal for trial in cases where the disposal is a guardianship order, a supervision and treatment order or an absolute discharge.
6. If the individual subsequently faces a criminal trial, whether for the same offences following a lawful remittal under Article 50A(7), or for entirely new offences, the question of fitness to participate would fall to be determined by the court on the evidence available at that time. Accordingly, a previous finding of unfitness does not mean the individual will necessarily remain unfit indefinitely, but equally a previous recovery would not preclude the issue of fitness being raised and reconsidered by the court in later proceedings.