

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

To review the law and procedures on unfitness to proceed and trials of fact.

The Ministers of Justice and Health recognise the public concern and interest in the legal and procedural framework on trials of the facts in Northern Ireland, i.e. when an accused in criminal proceedings is found to be unfit to plead, and have jointly requested an independent, external review of the position.

The Review will be wide ranging but will include the following issues:

- Should there be set out in statute a modernised legal test for unfitness to plead reflecting modern medical practice and in line with current psychiatric and psychological thinking?
- In applying the test should the court be obliged to recognise that removing a defendant from the normal trial process must “be a last resort” and take into account the current assistance available to the accused in the proceedings?
- What steps need to be taken to raise awareness of the available mechanisms to adjust proceedings to facilitate the defendant’s effective participation including the role of intermediaries?
- Should there be a statutory presumption of capacity to participate effectively in trial, for both adult and juvenile defendants?
- Whether the current procedure strikes the right balance between the rights of an accused person and those of victims and the wider public.
- Whether a conventional criminal trial should remain possible if an individual subsequently becomes fit to plead and should the circumstances in which this will be permitted be addressed?
- Whether existing disposals following a finding of fact provide adequate protection for the public.
- Whether sex offender notification requirements and other safeguarding measures should apply following findings involving acts which would otherwise constitute serious sexual offences
- What are the concerns of victims about the process and whether victims are afforded appropriate rights, recognition and support throughout the process.
- Is the existing system open to abuse?
- Whether the existing regime for appealing findings from trials of the facts is fit for purpose.

- Whether there is fair access for all defendants to the trial of the facts irrespective of social background.
- Does unfitness to plead by reason of physical disability require reform?
- Should there be a rebuttable statutory presumption that the fitness to plead and trial of facts procedure in relation to any defendant should be conducted separately from the trial of any co-defendants?
- What is the appropriate burden and standard of proof in the process and should this be set out in the statute for the avoidance of doubt?
- What steps should be taken to address inordinate delay in this process?
- Should there be the separation of the capacity to plead guilty from the capacity to participate effectively in a trial?
- Should the unfitness to plead procedure be extended to the magistrates' and youth courts?
- Should all members of the judiciary engaged in criminal proceedings in the Crown and magistrates' courts and all legal representatives appearing in such proceedings be required to receive training to assist them in understanding and identifying participation and communication difficulties experienced by vulnerable defendants and to raise their awareness of the available mechanisms to adjust proceedings to facilitate the defendant's effective participation?
- Should there be a guidance, or a code of practice, for clinicians in applying the tests to be drafted to accompany the statutory tests themselves to ensure consistency in the application and interpretation of the statutory test?
- May assistance be obtained from similar law and procedures in other common law jurisdictions?

The reviewer will deliver an interim report to the Ministers by 15 February 2027, with a final report to follow in spring 2027.