ARTICLE

Reforming fitness to plead and stand trial legislation in England and Wales

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SUMMARY

The legal decision on whether a defendant can fairly take part in a criminal trial in England and Wales is currently based on the leading case of *R v Pritchard* (1836), which despite subsequent case law updates does not embrace the concept of mental capacity or effectively identify defendants who are unable to meaningfully participate. Further to an extensive consultation process, the Law Commission published recommendations for reform in 2016, with a proposed new test of capacity to participate effectively in a trial and detailed suggestions for statutory reform of court procedures for managing defendants found unable to participate. Here we review the proposals and consider practical implications and suggestions regarding their implementation.

LEARNING OBJECTIVES

After reading this article you will be able to:

- appreciate the current problems with the law on fitness to plead in England and Wales
- understand the proposed test of capacity to participate effectively in a trial
- understand the proposed changes to the procedures available when a defendant is found unable to participate.

DECLARATION OF INTEREST

None.

KEYWORDS

Forensic mental health services; psychiatry and law; criminal justice system.

The ability of a defendant to enter their plea and participate in a criminal trial is currently determined in England and Wales by the common law case of *R v Pritchard* (1836). The defendant, who was deaf and mute, was charged with a capital offence. The judge ordered a jury to be impanelled to try whether he was able to plead. They found in the affirmative and the defendant, by way of a sign, then pleaded not guilty.

Although *Pritchard* remains the leading case, further case law, notably *R v John M* [2003] (Box 1), has effectively reformulated the criteria by which fitness to plead is determined (Box 2). The inability to meet any one of these criteria, as determined by a judge on the written or oral evidence of at least two registered medical practitioners, would lead to a finding of disability, rendering the defendant unfit to plead and stand trial. Although such a finding has been rare, with only 0.1% of defendants in the Crown Court being found unfit to plead (Law Commission 2016), the judiciary, healthcare professionals and academics have for many years commented on the purpose, validity and limited options inherent in this test (Mackay 2011; Shah 2012). The current test lacks fairness and is capable of forcing a mentally unwell defendant who passes the test into the rigours of a tortuous criminal trial, seemingly devoid of true justice (Rogers 2009).

To remedy the many failures of the Pritchard test and to rectify balancing the safeguarding of vulnerable defendants with the rights of victims and the need for public protection, the Law Commission set out to reform the law in England and Wales relating to unfitness to plead by the creation of the 'unfitness to plead' project (https://www.lawcom.gov.uk/project/unfitness-to-plead/). A consultation paper (Law Commission 2010), followed by an issues paper (Law Commission 2014), which received 45 responses, and an information-gathering symposium held in Leeds in 2014, resulted in a much awaited report with recommendations for legislative reform in 2016 (Law Commission 2016). Although an interim response from the government was received in June 2016, the full response is still awaited. In this article we review the proposed reforms and consider practical implications and suggestions regarding their implementation.

The Pritchard criteria

The advent of the modern courts and a greater understanding of mental illness and issues related to capacity have effectively rendered even the reformulated Pritchard criteria (Box 2) as being unfit for purpose. The criteria remain focused on specific cognitive evaluation of each test point without considering whether the defendant can participate effectively in a criminal trial. This is most strikingly highlighted by the case of *R v Moyle* [2008], which relates to the killing by Moyle of a 67-year-old man, whom he

knocked to the ground outside a public house in Blackpool, repeatedly kicking him and causing catastrophic head injuries that led to his death 3 weeks later. Moyle had paranoid schizophrenia and was a regular patron of the public house where the offence took place. The Court of Appeal ruled that the defendant was fit to plead even though he was experiencing extensive delusions that adversely impaired his ability to participate and be properly defended. Among these delusions was his belief that one of the psychiatrists called to assess him was part of a conspiracy involving the courts, police and prison system and that the court had already decided before the trial that he would be 'hung, drawn and quartered'. He did not even want to disclose his mental health problems to the psychiatrists who had examined him or to his legal team, for paranoid fear that 'something catastrophic might happen'. Given the extent of his paranoia about the criminal justice system, it is hard to foresee how he could participate meaningfully in a trial process, yet the Court of Appeal considered that he still met the Pritchard criteria and was therefore fit to plead and stand trial.

Further cases that highlight this position include *R v Robertson* [1968]: despite agreement being reached that the defendant's delusions might lead to him acting outside his best interests, they did not make him unfit to plead. In *R v Berry* [1977] it was found that the defendant, who had paranoid schizophrenia with a high degree of mental abnormality, would be able to comprehend the proceedings and stand trial and that the extent of his illness did not mean that he was incapable of meeting the required Pritchard criterion. In *JD v R* [2013] it was highlighted that simply having a low level of intelligence did not necessarily render a defendant unable to follow the course of proceedings. More recently, the case of *Marcantonio v R* (2016) in the Court of Appeal (Box 3) highlights that, while still upholding the Pritchard criteria, the courts are now trying to look at practical problems and solutions, such as permitting a guilty plea when a defendant understands the issues relevant to making that decision, despite a history of dementia that would otherwise raise concerns.

It is also accepted that the numerous case law variations of Pritchard that have developed over the years have led to inconsistency of application by both clinicians and the courts (Mackay 2000). Furthermore, in 1988 the right of a defendant to challenge a juror without cause was abolished (Criminal Justice Act 1988: section 118) and therefore the ability to challenge a juror is now considered to be a less relevant criterion, although it is clearly important that a defendant would be capable of challenging a juror that they recognise, such as their next-door neighbour or someone that they know whom they are aware does not like them.

Although the threshold for Pritchard unfitness to plead remains high, perhaps to deter mentally sound but unscrupulous defendants from attempting to fail the test in order to avoid their criminal responsibility. This high-threshold approach, while robust, clearly does not foster fairness, enable justice or embrace the concept of mental capacity. In England and Wales the ability to make decisions is defined in statute law by the Mental Capacity Act 2005: a person is deemed to lack capacity to make a decision if, at the time, an impairment or disturbance of their mind or brain leaves them unable to understand, retain, weigh up or communicate that

BOX 1 The *John M* appeal

John M was convicted in the Central Criminal Court of a range of sexual offences against the granddaughter of his partner, including rape, indecent assault, indecency with a child and taking indecent photographs of a child, and was sentenced to 8 years' imprisonment. He appealed his conviction on the grounds that he had a serious impairment of short-term memory, known as anterograde amnesia, that left him incapable of giving evidence and following proceedings and therefore unfit to stand trial.

The Crown's viepw was that he had demonstrated during his police interviews good memory for events during the relevant period, including the name and details of the complainant and visits to her grandmother, and that measures such as having frequent breaks in court would enable him to stand trial. Further to extensive expert evidence being considered, his appeal was dismissed. It was found that, despite an impairment of short-term memory that was confirmed on psychological testing, evaluation of the police interviews and careful consideration of the Pritchard criteria showed that he met the relevant criteria and was therefore considered to have been fit to plead and stand trial.

(*R v John M* [2003])

BOX 2 Criteria for fitness to plead as given in the case of *John M*

The judge directed the jury that, to be fit to stand trial, a defendant must be capable of six things:

1 understanding the charges;

2 deciding whether to plead guilty or not;

3 exercising their right to challenge jurors;

4 instructing solicitors and counsel: i.e. the defendant must be able to convey intelligibly to their lawyers the case they wish to put forward in their defence; this involves being able to (a) understand the lawyers' questions, (b) apply their mind to answering them and (c) convey intelligibly to the lawyers the answers they wish to give; it is not necessary that the defendant's instructions are plausible or believable or reliable, nor is it necessary that the defendant is able to see that they are implausible, unbelievable or unreliable;

5 following the course of the proceedings: i.e. the defendant must be able to (a) understand what is said by the witnesses and by counsel in their speeches to the jury and (b) communicate intelligibly to their lawyers any comment they may wish to make on anything that is said by the witnesses or counsel;

6 giving evidence in their own defence: i.e the defendant must be able to (a) understand the questions they are asked in the witness box, (b) apply their mind to answering them and (c) convey intelligibly to the jury the answers they wish to give.

(*R v John M* [2003])

BOX 3 The *Marcantonio* appeal

A homeowner returned to find that the house she and her husband had lived in for 54 years had a broken rear window and had been subjected to an untidy search. She found that numerous items of sentimental and monetary value (to a total of around £11 000) had been taken. Blood near the window was forensically examined and found to match that of Roberto Marcantonio. On arrest at his home address, Marcantonio he was found to have £2000 in a pocket of a pair of trousers. He was living in the community with psychiatric support from an older adults' mental health service and had a named care coordinator. He gave a 'no comment' interview to the police and later pleaded guilty to the offences, receiving a 5-year prison sentence.

One year and 9 months later, Marcantonio's solicitors appealed on the grounds that he had been unfit to plead and stand trial at the time of his original court case and that his guilty plea was unsafe because he had had mental health problems, including dementia, at that time. Waiving legal privilege, the lawyers who had represented him at his trial revealed that, despite his dementia, psychosis and depression, he had been able to understand the allegations, and at the time they had had no concerns about his ability to follow proceedings; they reported that he was able to discuss the evidence and that he had engaged in a conference with them lasting 10–12 minutes, maybe 15 at the most, during which his plea, mitigation and possible sentence were all discussed.

Although it was clear at appeal that a psychiatric report should have been obtained before acceptance of his guilty plea and despite retrospective evidence from several psychiatrists highlighting that he probably had dementia and schizophrenia at the time of his plea, the Court of Appeal considered that Marcantonio had understood that he was admitting to burglary, that this offence was illegal and that the effect of his plea would be that he would be sent to prison. It also considered that, despite his dementia, he would have been able to retain and consider the advice given to him by his legal team and that he had met the required Pritchard criteria at the time of the trial. His appeal was dismissed.

(*Marcantonio v R* [2016])

decision. The paradox is that a defendant might be found fit to plead under the Pritchard criteria but, under the Mental Capacity Act, be deemed unable to participate because they lack the ability to make valid decisions about their ongoing trial. This dilemma also accords with the seeming conflict that exists between the Pritchard criteria and the concept of 'effective participation' under Article 6 of the European Convention on Human Rights: at least a low level of ongoing participation within a trial is required.

The concept of effective participation

The central components of effective participation are very clearly outlined in *SC v United Kingdom* [2004]. SC was 11 years old at the time of the alleged offence and had significant intellectual disability. Along with a 14-year-old co-defendant, he was charged with attempted robbery. It was alleged that they had approached an 87-year-old woman in the street and tried to take her bag, causing her to fall and fracture her arm. SC already had a number of previous convictions and was therefore committed to the Crown Court, where he was convicted following a trial.

Having failed in his appeal to the Court of Appeal, the European Court of Human Rights, on a majority verdict of five to two, held that his Article 6 rights had been breached. The Court concluded that effective participation in a trial presupposes several factors: a broad understanding of the nature of the trial process, of what is at stake for the defendant and of the significance of any penalty imposed; and that, with the assistance of an interpreter, lawyer, social worker or friend, the defendant would be able to understand the general thrust of what is said in court, follow what is said by the prosecution witnesses and, if represented, would be able to explain to their lawyer their version of events, point out statements they disagree with and make their lawyer aware of any facts that should be put forward in their defence.

Clearly, these factors represent a much higher threshold than the Pritchard criteria, but they are actually more meaningful as they outline true participation and engagement in a fair trial.

In the domestic courts, in *R(P) v West London Youth Court* [2005] it was held that age and limited intelligence do not necessarily lead to an inability to have a fair trial and adaptations to procedure were suggested to enable participation (Box 4).

Supporting vulnerable defendants

Despite the rigid stance of the Pritchard test, the judiciary has remained proactive in being able to identify and take measures to support vulnerable defendants, as recognised in the vulnerable defendant provisions in Practice Direction (Criminal Proceedings: Further Directions) [2007]. Although it has yet to be implemented, para. 3D.2 of the Criminal Practice Directions [2015] requires the court to take 'every reasonable step' to encourage and facilitate the participation of any person. At a practical level the court can set ground rules on

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BOX 4 Steps that can be taken during a trial to enable participation in court proceedings

- Keep the individual's level of cognitive functioning in mind
- Use concise and simple language
- Have regular breaks
- Take additional time to explain court proceedings
- Be proactive in ensuring that the individual has access to support
- Explain and ensure that the individual understands the charge against them
- Explain the possible outcomes and sentences
- Ensure that cross-examination is carefully controlled so that questions are short and clear and frustration is minimised

(*R(P) v West London Youth Court* [2005])

how a vulnerable defendant should be approached by counsel and we suggest that, in many cases, taking a sensitive and non-confrontational approach would most likely enable effective participation when undergoing cross-examination.

Summary

What is clear from the cases outlined above is the wholesale inadequacy of the Pritchard test in the modern courts, highlighting the urgency for statutory reformulation of both the test and the procedure related to fitness to plead.

The importance of a full trial where possible

Placing a defendant in a modern criminal trial remains, without doubt, the fairest and most expeditious route to justice for defendants, complainants and the public. In some cases a defendant may benefit from adjustments or special measures to enable their participation in a full trial. These adjustments include sitting with their legal team in the court room if the defendant is vulnerable and needs support, having extra breaks if they have problems concentrating, and advising counsel to avoid taking a confrontational approach in cross-examination and to use simple, concise language and ask one question at a time if there are problems with vulnerability or understanding. An intermediary, usually a speech and language therapist with experience of the courts, can also be made available to help defendants who have problems with communication and understanding. Alternatively, a supporter, such as a family member or friend, could be made available. A live link to provide evidence could be made available to youths with limited intellectual or social functioning that compromises their ability to participate or to adults who are unable to participate for these reasons or because of a mental disorder such as severe agoraphobia (Gibbs 2017). Only when all such measures are inadequate and it is considered absolutely necessary should a defendant be removed from the full trial process.

The gold standard for a newly reformulated test of fitness to plead and stand trial would therefore be to effectively identify those defendants for whom such interventions would still be inadequate in enabling meaningful participation. Within the current system, intermediary assistance is *ad hoc* and provided by the courts. The Law Commission's proposal to introduce a statutory entitlement to intermediary assistance within a recognised scheme is to be welcomed, as is the provision of greater training for the judiciary on the needs of defendants with communication difficulties (Law Commission 2016).

Capacity to participate effectively in a trial

The prospect of introducing a novel test fortuitously enables modernisation of outdated terminology, including the relabelling of fitness to plead as 'capacity to participate effectively in a trial'. The term 'disability' would also be relegated from the new vocabulary owing to its lack of validity. It was agreed that the new test should take into account all relevant circumstances of the case, including the number and type of charges and the overall complexity of the case, although the gravity of the offence would be disregarded, given its subjective and emotionally laden nature. The new test would be set in statute law and would rectify the overwhelming need to refocus the test on decision-making capacity in alignment with the Mental Capacity Act 2005 (Law Commission 2016: para. 3.22).

We suggest that, although this may be a noble endeavour, understanding of the concept of capacity and the utility of this concept is continuing to evolve. The current law on capacity is based on a hybrid model with both diagnostic and communication thresholds that require a good understanding of the intentions of the framework to ensure that valid conclusions are drawn (Murray 2017). A defined psychiatric instrument to assist with such assessments has been recommended and initial trials of test criteria are proving reliable (Brown 2018). We suggest that the government should initiate its own field trials of the proposed test, augmented by use of test instruments, before the final test criteria are agreed. In addition, a regulatory impact assessment would assist in evaluating the number of defendants

found unfit to plead and ensuring public confidence that reform will not soften the legal system.

Expert reports on capacity

Although reports by two experts are still required, it is proposed that only one need be a registered medical practitioner: the other could be a registered psychologist or appropriately qualified individual (Law Commission 2016: para. 4.28). It is thought that this would improve efficiency and reduce delays.

The timely disclosure of concerns about lack of capacity to participate in a trial would also require the court to consider ordering joint instructions for the second expert, unless that was not in the interests of justice. It remains to be seen how such joint instructions would play out in such an adversarial arena as the criminal courts. We suggest that an alternative approach would be for the second report to be instructed by the opposing side, to ensure equity of representation and hopefully doing away with a third report, commissioned by the prosecution.

Deferment of finding and ability to plead guilty

The proposal of a statutory requirement to consider postponing determination of fitness to participate for up to 12 months, with a corresponding extension of the time limitation on hospital orders remanding a person to hospital for treatment under section 36 of the Mental Health Act 1983, would be an extremely useful amendment to proceedings (Law Commission 2016: para. 4.81). It would help reduce distress for acutely unwell patients admitted to hospital who are in the early stages of treatment. Transfer of a remand prisoner to hospital under sections 48 and 49 under the current provisions would still enable ongoing treatment in hospital without limitation of time, while court proceedings remain ongoing.

A new separate test of ability to plead guilty would provide defendants who are unfit to participate in a full trial with the option to face sentencing and potentially receive a custodial sentence (Law Commission 2016). This would be an advantageous and novel development that would help expedite proceedings for those who wish to accept moral responsibility for their offences and benefit from sentence reduction in return for a guilty plea.

The 'alternative finding procedure' and psychiatric defences

At present, if a defendant is found unfit to plead there is a trial of facts determined by a jury that provides a finding on whether the defendant committed the act or omissions that led to the offence, without retrospective evaluation of the defendant's mental state at that time. The proposed new process would no longer consider just the acts of the defendant, but would enable, where possible, exploration of their mental state. Hence, the process is aptly renamed the 'alternative finding procedure' (Law Commission 2016: para. 5.37). Here, rather than finding that the accused committed the offence a finding that the allegation was proved against them would be made.

This new process would replace the current hearing for determination of facts under section 4A of the Criminal Procedure (Insanity) Act 1964. Legally, the Crown would now be required to prove all of the relevant factors related to the offence, not simply whether the defendant committed the act or made the omission leading to the offence. The Crown would be required to prove all relevant parts of the offence beyond reasonable doubt. In practical terms, it would appear that the alternative finding procedure would essentially become a full trial, albeit the defendant would not be directly cross-examined. The proposed availability of full defences in this process would create fairness for defendants and empower their pursuit of acquittal by exhausting all available legal avenues, such as self-defence or acting under duress. Interestingly, it is proposed that the special verdict of M'Naghten insanity, which affords an acquittal, would not be available on the jury's initial finding but would be available on a further hearing at which the special verdict could be considered on the basis of medical evidence.

We believe that, although defendants may not be able to give evidence in court if they are considered to be unfit to plead, they can still outline to some extent their thoughts, perceptions and emotions of what happened at the time of their offence to their legal team and experts and hence it would appear that their evidence could be introduced by way of medical experts. Although this would be a welcome addition to the judicial process, we anticipate that the new proposed defence opportunities would invariably involve psychiatric evidence that would otherwise not have been required and create extra opportunities for cross-examination of experts, potentially impinging on the initial intention to streamline and minimise costs during the trial process. To help counter this problem, we suggest that instructions for initial reports on capacity to participate should also include evaluation of mental state at the time of the offence and that only experts with the ability and expertise to evaluate such defences should be instructed.

One concern with the alternative finding procedure is that it is likely to lead to high numbers of defendants seeking to avoid criminal convictions

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by pursuing this route and that they would effectively be utilising their mental condition to bypass criminal proceedings. The only exception to the new proposals is that partial defences to murder, namely diminished responsibility, loss of control and killing in pursuance of a suicide pact, would be excluded as these serve only to lower the threshold of conviction from murder to manslaughter. However, the special verdict arising from the M'Naghten insanity defence would still be available for those charged with murder.

The proposed reform, which was subject to significant opposition during the consultation process, would mean that the defendant could elect to have a judge determine the finding within the alternate finding procedure rather than be heard before a jury. We suggest that this approach would be helpful, as it would help courts to fast-track appropriate cases, especially where there is little doubt that streamlined determination of finding and disposal would be in the best interests of the defendant and other parties. Criminal procedures are known to be stressful for defendants and are associated with an increased risk of self-harm (Galappathie 2017).

Disposal

An improved understanding of defendants and their risks has highlighted a need to vary the manner in which disposals are made depending on the circumstances of each case. Defendants found to lack capacity to participate and who do not present a risk to others may benefit from early diversion from the courts. Although this will be a helpful imperative for the courts, we note that this incentive may increase the temptation for some defendants to seek this outcome to try to avoid criminal responsibility. Disposal by way of a hospital order (under section 36 of the Mental Health Act) would continue to remain an option for those meeting the required criteria. An absolute discharge would also remain possible.

Although prison would generally not be available as a disposal option, even for those who have committed the most serious offences the prospect of supervision within the community would remain and would now be greatly enhanced, as summarised in Box 5 (Law Commission 2016: para 6.26). Currently, dispute often arises between Social Services and the probation service regarding willingness to allocate a supervising officer. Hence, it is proposed that the responsibility would fall to the local authority to allocate a supervisor.

It is also proposed that supervision orders could last for longer than 2 years and would be strengthened to give the courts additional powers, including specific supervision requirements, constructive requirements to meet the defendant's needs, review requirements and a range of sanctions should the order be breached, such as curfew or fine (at present, the courts are able only to revoke or vary a supervision order).

BOX 5 Proposed changes to disposals in the community

- The local authority would be responsible for all supervision orders and would be required to provide a supervising officer
- Supervision orders would include specific supervision, constructive and review requirements
- Sanctions for breach of a supervision order would include a curfew with or without electronic monitoring, fine or custody for adults, or a youth rehabilitation order with intensive supervision and surveillance for youths
- The imposition of a restraining order would be available

(Law Commission 2016: para. 6.26)

The option of a custodial sanction would, surprisingly, also be available, but only for those thought to be able to tolerate prison and only after a warning at court. We recommend that this be reconsidered, as prison invariably includes a punishment component and it remains unfair that those who lack the ability to defend themselves from this outcome at full trial could still face such a disposal. Custody would not be available for youth offenders, for whom there would instead be the option of a youth rehabilitation order with intensive supervision and surveillance.

In an attempt to address risks in the community, those subject to supervision orders who have committed certain violent or sexual offences would also be subject to multi-agency public protection arrangements (MAPPA) for the duration of their order. The proposed ability of the court to impose a restraining order is also to be welcomed. The proposed removal of the mandatory hospital and restriction orders (under sections 37 and 41 of the Mental Health Act) in murder cases would create greater autonomy for clinicians and the courts and we support it provided that it is used judiciously.

Magistrates' and youth courts

Currently, the majority of law and procedure related to unfitness to plead is not available in the magistrates' and youth courts and many defendants are sent up to the Crown Court when the issue arises. Under the new proposals, defendants found unable to participate effectively in a magistrates' court would remain within the summary courts but their cases would now be presided over by a district judge to ensure continuity, and only defendants

MCQ answers
1 b 2 b 3 d 4 e 5 e

able to participate could elect where applicable for trial by jury in the Crown Court (Law Commission 2016: para. 7.92 and 7.100).

Although this may reduce the burden on the Crown Court, we anticipate it to be a disadvantage to defendants for whom trial by jury would have been in their best interests compared with the rigours of trial by an experienced district judge, especially when all the nuances of full defences would have been available to put before the fresh eyes of a jury.

The magistrates' court would now have the same disposal options available to the Crown Court, albeit hospital orders would only be for imprisonable offences. Restrictions orders would also need to be sent up to the Crown Court for consideration, and custodial sanctions for breach offences would not be available. Youth offenders under 14 appearing for the first time in the youth courts would be screened for participation difficulties and, when adequate resources become available, this would be increased to those under 18.

Appeals and resumption of prosecution

Those acting for the defendant would acquire the right to appeal against a finding of inability to participate, a fairer position than the current situation, which leaves this right solely to the (unfit) defendant to initiate, and the Appeal Court would be empowered to send appropriate cases back to the Crown Court to re-determine (Law Commission 2016: para. 9.17).

Currently, if an individual regains fitness to plead, prosecution can only be resumed if they are subject to a restricted hospital order under the Criminal Procedure (Insanity) Act 1964 (those under any other disposal are not eligible). To address this narrow limit, a broadening of the power to resume prosecutions is proposed subject to an interests of justice check. To ensure balance, defendants who regain capacity to participate and want to clear their name would also be entitled to apply for resumption.

Conclusions

The law on fitness to plead remains antiquated and unfit for purpose, with an obvious need for reform. The Law Commission's recommendations for its statutory reformulation contain robust proposals for a new test of capacity to participate effectively in a trial and contains well thought-out procedures to enable its successful operation between the criminal justice system and mental health services. Until such changes are made, the legal system of England and Wales will continue to suffer the indignity of the mentally unwell being subjected to criminal trials in which they cannot participate effectively. We therefore recommend urgent reallocation of parliamentary resources to enable draft legislation, resource allocation and a timescale for implementation of reform of the law on fitness to plead and stand trial.

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MCQs

Select the single best option for each question

1 The common law leading case for fitness to plead is
a *Moyle* (1846)
b *Pritchard* (1836)
c *John M* [1992]
d *Robertson* [1891]
e *Berry* (1926).

2 As regards the proposed new test of capacity to participate effectively in a trial:
a it would need to be conducted by three experts, one of whom must be instructed by the court
b it would need to be conducted by two experts, one of whom must be a registered medical practitioner
c it would need to be conducted by two experts, both of whom must be registered medical practitioners
d it would always be conducted by a psychologist
e a suitably qualified nurse would always be needed to conduct the test.

3 Under the proposed reforms, resumption of trial for a defendant found unable to participate effectively cannot be applied for by:
a the defendant
b the defendant's legal representative
c the Ministry of Justice
d the victim
e the Home Secretary.

4 Under the proposed reforms, disposal options applicable to a defendant found unfit to participate effectively do not include:
a a hospital order
b a hospital order with a restriction order
c a prison sentence for breach of a community order
d a supervision order
e a community treatment order under the Mental Health Act 1983.

5 Trial adjustments and special measures that can be used in court to help a defendant to take part in a full trial do not include:
a allowing the defendant to sit with their legal team
b having extra breaks
c being asked questions using simple and concise language when giving evidence
d having the assistance of a supporter at court
e being allowed to phone a friend when giving evidence.