

# Royal College of Psychiatrists Consultation Response

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**DATE: 02 February 2011**

**RESPONSE OF:** THE ROYAL COLLEGE OF PSYCHIATRISTS

**RESPONSE TO: Unfitness to plead**

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

We are pleased to respond to this consultation. This consultation was prepared by the College Policy Unit and contributed to by the following faculties:

- General and Community faculty
- Forensic faculty
- Learning Disability faculty

This consultation was approved by: Dr Ola Junaid-Associate Registrar

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## **Response to Consultation paper 197, Unfitness to plead**

### **1. General observations**

1.1 The response from the College is drawn from the perspectives of forensic, general and community and learning disability psychiatrists. Before we address the questions posed in the consultation paper individually, we make some general observations which express concerns about some of the constructs underpinning the thrust of the consultation paper.

#### **1.2 The Capacity test:**

The Royal College of Psychiatrists supports the overall proposals contained within the Consultation paper. Many forensic psychiatrists have recognised the limitations placed upon them by the Pritchard criteria for Fitness to Plead. Despite the recommendations of the Butler Committee in 1975, when the law on Fitness to Plead was reviewed and resulted in Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 which led to changes in the process and sentencing of defendants found unfit to plead, the criteria was not changed. Therefore the current Provisional Proposal number 1, that the current Pritchard Test should be replaced with a new legal test which assesses whether the accused has decision making capacity for trial is one that the College would support.

There is much to commend the general approach of reforming the issue as an assessment of capacity regarding the specific decisions relevant to proceedings. This approach is (increasingly) familiar to psychiatrists who have had to make the issue more central to their practice since the Mental Capacity Act 2005. The move to unify the approaches to capacity issues in criminal and civil law is welcome, not least because it supports there being an overarching concept of capacity which needs to be considered in all areas of life.

However the Mental Capacity Act in operation has exposed pragmatic problems with the legal definition of capacity, partly because the elements do not necessarily reflect the actual mechanisms by which people make decisions and partly because there is still a judgement to be made about the threshold for declaring someone to lack capacity. It is hard also to deal with suggestibility in this framework, which may have particular relevance for matters before a court.

### **1.3 Special measures and legal instructions**

Reference in the consultation paper to legal professionals preparing more detailed instructions, e.g. with regards to the specific special measures on which opinion is sought, would be warmly welcomed by psychiatrists. This would meet the concerns about introducing this particular test and also improve existing areas of practice. Currently, the quality of instructions to psychiatrists is frequently very poor. For example, Bickle and Stankard (2008) in a study of defendants potentially liable to a statutory assumption of dangerousness under the Criminal Justice Act 2003 found that only 6% of instructions (sent mostly by defence solicitors) directed the psychiatrist to the relevant provisions and in fact nearly four fifths made no reference to dangerousness or risk at all.

In view of such a position, we would ask the Law Commission to be mindful of the commitment in terms of changing practice and also potentially in resources in order to improve legal instructions in the manner prescribed. Firstly, we would ask the Commission to consider by which mechanism this type of improved instruction would be ensured. Secondly, we would ask that arrangements are made in such a way that this does not extend the time taken to produce a report, which can already be quite lengthy and result in extended periods of remand when we know that around half of prisoners on remand ultimately do not receive a custodial sentence. Extended periods of

remand have significant personal costs to the individual as well as to the public purse. Any proposals to reform the system must make these issues a priority.

#### **1.4 Professional qualifications/background of experts undertaking decision-making capacity assessments**

We note the Law Commission's assertion that relevant experts need to be medically qualified. Certainly psychiatrists have the training and experience to undertake a mental state assessment and to ensure a bio-psycho-social approach to case formulation. The Commission notes that some accused may lack capacity because of a physical condition. It is because only psychiatrists are medically trained prior to their psychiatric training that they have the ability to interpret the complex physical and mental interrelationships of a person's state of mind. This type of inclusive framework affords a comprehensive opinion in this context of such importance to the individual whose liberty is at stake. Notwithstanding this, the important issue is that the training and experience of the individual expert makes them competent for the task.

We appreciate the Law Commission's view, and that of the Joint Committee on Human Rights that assessment by a medically qualified professional is likely to be necessary to meet ECHR concerns as per Winterwerp. However, it has been argued that appropriately trained psychologists might meet that test. We are not legal experts and we await a judgment from the European Court of Human Rights to know if that is so. It should be noted that although members of other professions may have responsibility for patients once detained under the Mental Health Act they are not able to provide the required medical expertise to recommend the initial detention. The Mental Health Act retains the requirement to have 2 registered medical practitioners' opinions, one of whom must be approved under section 12 MHA 1983, before a person is detained under the Act, and the Mental Capacity Act 2005 requires one registered medical practitioner's opinion before a person can be deprived of their liberty

under that Act. Further, if the Secretary of State wishes to recall a person who is conditionally discharged, from a restriction order under the MHA, a report from a psychiatrist is required. It is only when detention is renewed for another period that this requirement is extended to other professions.

We also remain concerned about the ability of the current work force to cope with the possible increase in demand. There are 30,000 capacity hearings/year in the US and 100/ year in the UK at present. That could easily become several thousand a year here.

### **1. Comments on Consultation Questions**

**Question 1: Do consultees agree that we should aim to construct a scheme which allows courts to operate a continuum whereby those accused who do not have decision-making capacity will be subject to the Section 4A hearing and those defendants with decision-making capacity should be subject to a trial with or without special measures depending on the level of assistance which they need? (Paragraph 4.27)**

Yes. The inclusion of the availability of the special measures and how they might be applied would appear to be a logical and necessary development of a new test. Capacity is a contextual faculty as recognised in the MCA 2005 where one of the overarching principles is to make every effort to enhance someone's capacity. Therefore, it might be argued that a comprehensive assessment of individual capacities cannot be made without consideration of such measures so therefore it should be included in the test.

Anecdotally, this would appear to be in line with the approach increasingly taken by experts under the current law, where the Pritchard criteria is considered alongside what measures might be necessary to ensure they are met.

Where possible an individual should be given the opportunity to engage fully in the legal process to allow them to proffer a defense where at all possible. A continuum approach has the benefit it will allow for flexibility in order to allow this for more individuals.

**Question 2: Can consultees think of other changes to evidence or procedure which would render participation in the trial process more effective for defendants who have decision making capacity but due to a mental disorder or other impairment require additional assistance to participate? (Paragraph 4.31)**

People with mental disorder (say severe depression) can be at a great disadvantage in various ways, they may not be able to concentrate on complex evidence e.g. in a fraud trial; they may feel pathologically guilty and give misleading instructions to their lawyers; they may break down completely during the trial as the stresses mount, sometimes in such cases trials are abandoned. An evaluation/assessment of fitness to plead should be supplemented by an evaluation of fitness to be tried together with suggestions as to how the individual who is found impaired can be assisted during the trial in order to allow it to proceed fairly and to completion. It is central that the views of the defendant as to the assistance they need should be sought and adhered to where feasible and compatible with the principles of a fair trial.

Most important however is that the judges and lawyers (especially the prosecution) have had guidance on how to proceed with a person of a particular impairment.

The assessment should be performed by a suitably qualified expert in the relevant mental disorder or relevant impairment of the defendant. (see below) There are three major groups of independent variables: the demands of the process; the person's ability to engage in the process; and the effect of

additional procedures e.g. special measures on the ability of the defendant to engage in the process. Knowledge of all of these should be a requisite of the assessor.

The procedure should allow the special measures available to defendants to be expanded to those currently available to witnesses. Particularly the process of using an intermediary as a go between through which evidence can be given by the defendant should be more formally acknowledged as an accepted procedural process, very much akin to using a translator.

Due to the varied nature of the mental disorders that give rise to unfitness to plead, the procedure should indicate, that assessors should be experienced in certain specific types of mental disorders, learning disability, autism and where relevant childhood disorders, as these groups may have specific deficits in their abilities that affect the process.

As an example, a College member from the Learning Disability faculty has observed a significant number of individuals being deemed unfit to plead by psychiatrists who have had limited LD experience. However this psychiatrist has found them fit to plead. This may in theory appear to be an issue of core training or the development of clinical skills but in practice it is hard to retain relevant and up to date knowledge and expertise. Therefore we believe that the assessment of these groups should generally be limited to those with ongoing clinical care or recent experience of these groups.

For instance individuals with LD generally may have specific characteristics that affect the legal process such as a slower rate of information processing; difficulty understanding causality; difficulty with abstract concepts; difficulty with multiple concepts; rigid thinking style; difficulty with sequencing events and using concepts of time; working memory deficits; difficulty with non verbally presented information; poor retention of information; and they may be more suggestible and compliant. They will be helped to engage by the

repetition of evidence or the provision of alternative means of evidential presentation to that of the spoken word.

Similarly those with autistic type conditions may have a number of the above features as well as others specific deficits in thinking styles and information processing. If identified in a specialist assessment the above can potentially be compensated for and their effects minimised.

The provision of expert evidence as to the general effect of a mental disorder on presentation understanding or conduct could usefully be supported by the provision of written or AV material, and should be delivered by an expert who is independent of the matter before the court entirely, i.e. not a witness for the defence or prosecution

**Question 3: Do consultees agree that we have correctly identified the options for reform in relation to the Section 4A hearing? If not, what other options for reform would consultees propose? (Paragraph 6.153)**

The reform of the section 4A hearing is complex, and mainly argued with respect to very serious offences. We have some reservations about this, as we remain unconvinced that the distinction between the new special verdicts and conviction is very meaningful, and the non-involvement of the accused closes some defence options. Pragmatically however, this will probably cause only occasional difficulties, which perhaps could be remedied on appeal.

**Question 4: If consultees do not agree that option 5 is the best option for reform, would they agree with any other option? (Paragraph 6.153)**

The College supports option 5.

However a member of the College submitted the following comments:

“I believe that the CP does not explore the effect of the Mental Health Act on the overall process of finding on unfitness to plead. In addition the consultation does not explore how the issues of criminogenic behaviour are approached in other jurisdictions i.e. Europe and the USA in particular”.

**Question 5: Should a jury be able to find that an unfit accused has done the act and that there are no grounds for acquittal in relation to an act other than that specifically charged? (Paragraph 6.159)**

Yes

**Question 6: Are there circumstances in which an accused person who is found to have done the act and in respect of whom there are no grounds for an acquittal should be able to request remission for trial? (Paragraph 7.26)**

We agree that this response should be possible.

However the Secretary of State discretion to refer cases back to the court is only exercised in the most serious of cases, these may be likely to result in indeterminate sentences or lengthy sentences if found guilty. This removes the authority to discharge or release the individual from the sole remit of the Mental Health Tribunal service to that of also the Parole Board, whom have a more restrictive test for discharge/release. This potentially leads to individuals having their liberty restricted for longer in order to protect the public.

It would be unlikely that anyone other than those having a Mental Health Act disposal would avail themselves of this facility due to the risks above. Individuals subject to the Mental Health Act have a right of appeal of their current restrictions of liberty through established Mental Health Tribunals at 6

months, and are unlikely to refer back to court to be subject to the risk of further additional time in custody.

**Question 7: Should an accused who is found to be unfit to plead (or to lack decision-making capacity) be subject to the Section 4A hearing in the same proceedings as co-defendants who are being tried? (Paragraph 7.44)**

Yes.

**Question 8: Do consultees think that the capacity based test which we have proposed for trial on indictment should apply equally to proceedings which are triable summarily? (Paragraph 8.37)**

Yes.

The proposed capacity based test should also apply to proceedings which are triable summarily. Whilst acknowledging that proportionality issue of applying more complex psycho-legal solutions on less serious matters, concerns about applying the same solution in the Magistrates Court would appear to be outweighed by concerns around natural justice and practical considerations about case management.

The seriousness of the charge is unlikely to be a discriminator for the seriousness of mental disorder. It should be a central principle that the psychiatric input should be based on the level of psychiatric need. Making the new test unavailable to offences triable summarily is likely to mean that such an important assessment would not be provided to this type of defendant. Whilst this group would not have the expertise to opine as to whether this was an issue of human rights, it would perhaps seem an unduly arbitrary response to an important psychiatric issue.

The problem is getting adequate and timely psychiatric evidence to the magistrates. If the charge is a summary one the magistrates should have psychiatric reports and if they decide that the accused is under a disability they should hear the facts of the case. This may lead to the charge being dropped. If not then the bench should take advice about disposal and the feasibility of a fair trial at a later date. If the charge is an either way case then it should be promoted to the Crown Court.

**Question 9: Do consultees think that if an accused lacks decision-making capacity there should be a mandatory fact-finding procedure in the Magistrates' Court? (Paragraph 8.37)**

Yes. As above a fact finding process allows responsibility of committing an act to be addressed.

**Question 10: If consultees think that there should be a mandatory fact-finding procedure, do they think it should be limited to consideration of the external elements of the offence or should it mirror our provisional proposals 8 and 9? (Paragraph 8.37)**

This is answered above. It should be limited to the external elements.

**Question 11: Do the matters raised in questions 8, 9 and 10 merit equal consideration in relation to the procedure in the youth courts? (Paragraph 8.68)**

Yes we strongly support the Law Commission on this issue.

**Question 12: How far if at all, does the age of criminal Responsibility factor into the issue of decision-making capacity in youth trials? (Paragraph 8.69)**

The age of criminal responsibility does play a part in the issue of decision making and the future disposal of the young person on trial.

As the CP acknowledges the law with respect to children who kill in England is very different from that of most other European countries not only because the age of criminal responsibility is exceptionally low but also the doctrine of *doli incapax* was abolished in 1998. Moreover, the distinction between manslaughter and murder has meant that those convicted of the latter are subject to a mandatory penalty of indefinite detention, with its duration assessed by the Home Secretary and not by the courts or the parole board. This has meant that not only are children who have not yet reached puberty treated as if they were adults, but their handling puts them at a particular disadvantage.

Our opposition to this situation is well stated by one College Member, Professor Rutter as follows.

“First, there is extensive evidence that important developmental changes continue throughout the teenage years. To reduce this to the question of whether children know right from wrong is highly misleading. Even pre-school children appreciate that distinction, although they approach the distinction more in terms of fear of detection and the punishment that will follow, rather than internal justice principles and concern for the victims of wrong acts. During early adolescence young people's thinking tends to become more abstract, multi-dimensional, self-reflective and, in addition, they are able to generate more alternatives in their decision making. There is a marked increase in emotional introspection together with a greater tendency to look back with regret and to look ahead with apprehension. The transition to more

adult modes of thinking does not emerge at any single age but it is clear that it is very far from complete at age 10. It should be added that, as with any aspect of development, there are marked individual differences in which children achieve maturity.

The second consideration is that homicide is rather different from the rest of juvenile delinquency, in terms of the fact that it has not shown the same marked rise over the last half century or so. Nevertheless, homicide and serious juvenile delinquency have much in common.

Third, children who commit homicide are likely to be seriously psychologically disturbed and they have often experienced serious adversity. This means that, usually, they will require residential care in order to receive the intensive psychological treatment that they urgently need. But also it means that, in many cases, rehabilitation is a realisable goal”.

In the College view there is a real need to re-introduce *doli incapax* and to repeal the provision in the 1998 Act which abolished it. Further discussion of this may need to occur but we suggest that it would be reasonable to assume a lack of capacity below the age of 14 but to reverse the presumption over that age. In either instance it should be open to the courts to decide that in the case of this particular child, with this particular background, with this particular crime, there was capacity below the age of 14 or, alternatively, there was not capacity over the age of 14.

## **Consultation Proposals**

***Provisional Proposal – 1: The current Pritchard test should be replaced and there should be a new legal test which assesses whether the accused has decision-making capacity for trial. This test should take into account all the requirements for meaningful participation in the criminal proceedings. (Paragraph 3.41)***

Unlike in the Mental Capacity Act, there is no reference in the Consultation paper to the assumed default position for all defendants. That is, in the case of the Mental Capacity Act, it is assumed that an individual has capacity unless that is proved otherwise, using the criteria in that Act. The College believes that it is worth taking the same stance with Unfitness to Plead in that it should be stated clearly that all defendants should be assumed to be Fit to Plead unless that is proved otherwise. We would suggest that this could be incorporated into Proposal 1.

The Proposals around changing the Partial Defences to Murder, particularly Diminished Responsibility, included the requirement that the person was suffering from a mental disorder. The Pritchard Criteria has never stipulated the need for a mental disorder of any type to be present. The College feel that this is an important omission from them and would greatly help in the assessment of Fitness to Plead.

***Provisional Proposal – 2: A new decision-making capacity test should not require that any decision the accused makes must be rational or wise.***

The College would support the fact that any new Decision Making Capacity Test should not require that any decision the accused makes must be rational or wise.

***Provisional Proposal – 3: The legal test should be a revised single test<sup>25</sup> which assesses the decision-making capacity of the accused by reference to the entire spectrum of trial decisions he or she might be required to make. Under this test an accused would be found to have or to lack decision-making capacity for the criminal proceedings.***

The issues around proportionality which are discussed in the Consultation paper are ones that forensic psychiatrists frequently face in assessments of a defendant's Fitness to Plead. Most forensic psychiatrists would recognise situations where defendants could be considered Fit to Plead where they intend entering a guilty plea but would not be Fit to Plead in a contested trial particularly if that were a lengthy and complex one. The consultation paper also does not state the Law Commission's view on the Standard of Proof for Fitness to Plead. Although it is probably implicit that it would remain as, on the Balance of the Probabilities, perhaps the proposal would be further strengthened by explicitly stating it here.

***Provisional Proposal – 4: In determining the defendant's decision making capacity, it would be incumbent on the judge to take account of the complexity of the particular proceedings and gravity of the outcome. In particular the judge should take account of how important any disability is likely to be in the context of the decision the accused must make in the context of the trial which the accused faces.***

The College, on balance, supports this approach. The determination must be case specific and take account of the context, including the seriousness of the outcome. The judge should be guided by expert opinion in this regard.

We accept there is a case for asserting that a disaggregated test could be found unduly complex and should be rejected on pragmatic, rather than theoretical grounds. The potential spectacle of experts who are essentially in

agreement on the primary issue engaging in detailed and costly contention over the finer points of what could potentially be very many capacity issues is unlikely to pass a test of benefit versus cost.

Notwithstanding, there must be concern that a unitary test according to how it is set out in the consultation paper, provides for the unwelcome possibility of a defendant being found unfit to plead/without decision-making capacity with a supporting argument on the relevant capacity from only one expert. This is because in a unitary test experts could agree on overall unfitness to plead/absence of decision-making capacity whilst disagreeing on the nature of that incapacity. This would appear to risk the basis for finding decision-making incapacity being unsatisfactorily tested in the court.

One way forward would be to retain a modified concept of a unitary test by simply insisting that experts must agree on impairment of at least one stated element/aspect of capacity. They could be free to disagree about other capacities, but providing that at least two experts agreed that one of the crucial capacities was impaired, this would re-assure the Court. Without such provision there must exist concern that within a unitary construct a supportive second opinion and the natural justice which goes with such an arrangement would not necessarily be provided before this important finding could be made.

***Provisional Proposal – 5: Decision-making capacity should be assessed with a view to ascertaining whether an accused could undergo a trial or plead guilty with the assistance of special measures and where any other reasonable adjustments have been made.***

The College would support this.

***Provisional Proposal – 6: Where a defendant who is subject to a trial has a mental disorder or other impairment and wishes to give evidence then expert evidence on the general effect of that mental disorder or impairment should be admissible.***

The College would support such a change and perhaps go further in suggesting and say that where a defendant who has a mental disorder, intends to defend themselves in court, then expert evidence should be admitted on the general affect that their mental disorder would have on their ability to defend themselves.

***Provisional Proposal – 7: A defined psychiatric test to assess decision-making capacity should be developed and this should accompany the legal test as to decision-making capacity.***

There appear to be several cogent arguments against having a defined psychiatric test *as per* Part 5 of the CP, several of which the Law Commission sets out themselves. Furthermore, a defined test would appear to be made unnecessary by other proposals.

A specific psychiatric test for capacity does not exist in civil law/the Mental Capacity Act 2005. We would argue that rather than leaving psychiatrists unequipped, this allows them the freedom to tailor their professionalism to each individual unique case. Mental disorders are diverse, individuals even more so and the psychiatric testing underpinning the legal capacity test will differ by condition and case. Introducing any defined psychiatric test along the lines suggested would appear to run the risk of creating a burden of rigid and perhaps unnecessary testing. In addition, evidence supporting the notion that a psychiatric test is likely to be impractical lies in the Commission's own citing of numerous such tests in the United States of America which have proven inadequate.

It would of course be concerning if experts did not address all of the points or capacities at issue. However, the solution to this potential problem lies in the nature and quality of instructions provided to experts. Elsewhere, the consultation paper explains the role of the judge and others in providing instructions regarding detailed aspects of proceedings, including the specific, special measures that might be available (*as per* Part 4 of the CP). We think the Commission could take confidence that if these capacities are set out in instructions, they would be answered by experts. Moreover, experts are likely to be better prepared for answering these tests owing to their familiarity from civil law and everyday practice.

Further, even if the theoretical arguments about the desirability of a defined psychiatric test were to win the day, there must be real practical concerns about the nature of the specific test under development by Dr Blackwood and colleague in as far as it is described. This test includes a video sequence for defendants to watch. It is difficult to imagine that many establishments would be well positioned to provide facilities for such a test and problems with bringing information technology into prison are notorious.

The inherent problem with having a rigid psychiatric test on this or any other issue is that it will not evolve to reflect developing psychiatric thinking and would gradually become less and less appropriate. One could envisage a situation in which a body of expert opinion (for example meeting a 'Bolam/Bolitho test' of responsible medical opinion) asserted that an aspect of the test was no longer relevant or accurate and the consequences including legal appeals that might ensue.

Perhaps a good comparison could be drawn with the recently reformed law around diminished responsibility. The 1959 Homicide Act used terminology for mental disorder or mental factors which, naturally enough, became archaic over time and more difficult to interpret. Whilst acknowledging that this was contained within statute law and the psychiatric test discussed might not

necessarily have the same status, nevertheless, the notion of being hamstrung by rigid definitions is similar.

Finally, it would seem contradictory to endorse an approach that unifies civil and criminal law, whilst containing within it a very important departure in the form of a statutorily defined psychiatric test. This would impair the clarity which the proposals promise otherwise.

The forensic faculty commented as follows:

“Many senior forensic psychiatrists including those who have undertaken significant research into Fitness to Plead have said that they would feel uncomfortable with the concept of ‘a defined Psychiatric Test’ to assess decision making capacity. It is suggested that introducing a test may give a false idea of scientific validity. Many forensic psychiatrists are aware that there are very few Psychiatric Tests which have both high levels of validity and accuracy. If this were to be a proper scientific test it would need to be clear what both the false positive and false negative rates would be. However, there is no base line to calibrate this test with and who decides whether the test has got it right and how to determine its accuracy? The introduction of a scientific test of this sort then raises the issue of training to administer the test, accreditation for its use which may further complicate matters. It is interesting that no such test has been used in the capacity assessments under the Mental Capacity Act. The arguments put forward in paragraph 5.6 suggests this is because the context is different however the Forensic Faculty do not find that this argument is particularly compelling.

Although the Law Commission quite rightly points out that psychiatrists are inconsistent in their application of the Pritchard criteria, which is quoted from a single study, it is the Faculty’s view that this should not automatically lead to the assumption that a single scientific test would be the answer to this problem. The Faculty would suggest, as it has done for a number of years, that the answer to this issue is rather that the qualifications and expertise of expert

witnesses who are commissioned to undertake this work needs to be more rigorously assessed. The simple answer might be that if more care is taken in the choice of expert, then better assessments of Fitness to Plead might be the result. At the present time Defence and Prosecution Counsel are able to commission any psychiatrist to give an opinion on Fitness to Plead, even if they do not have the specialist knowledge and background of forensic psychiatrists. Perhaps the safest view on this matter is that if a test is developed then Assessors should be free to use the test if they want to but that there should be no expectation that they will have to use it. As the Law Commission states in Paragraph 5.6, Capacity is, in effect, a Clinical decision”.

***Provisional Proposal – 13: In the event of a referral back to court by the Secretary of State and where the accused is found to be unfit to plead,<sup>27</sup> there should not be any need to have a further hearing on the issue of whether the accused did the act. This is subject to the proviso that the court considers it to be in the interests of justice.<sup>28</sup>***

The College would support this Proposal but add that it might be worth considering whether the court should make a decision at the time of the unfitness finding about whether there should be a trial, should fitness be regained. This is based on the fact the defining of Unfitness to Plead is meant to postpone a trial not replace it.

***Provisional Proposal – 14: In circumstances where a finding under section 4A is quashed and there has been no challenge to a finding in relation to section 4 (that the accused is under a disability) there should be a power for the Court of Appeal in appropriate circumstances to order a re-hearing under section***

Finally, whilst it maybe said that it is not part of the remit of the consultation paper, the College feels that it is worth stating that a trial of a fit defendant is preferable to a Part 4A hearing of an unfit one. Finding someone unfit

therefore should be the last resort, with time given to getting the individual fit before it is reached. This was the situation of many psychiatrists faced in previous years.

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