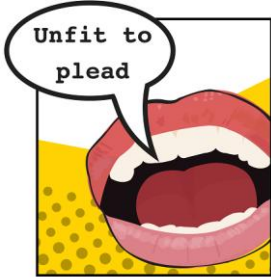




UNFITNESS TO PLEAD – A CONSULTATION PAPER

What is unfitness to plead all about?



It is when a person with a disability is accused of committing a crime.

The disability might be mental or physical.

Such a person might find it difficult to take part in what happens in court.

We call a person who finds it so difficult that they cannot take part properly “unfit to plead”.



If a person is unfit to plead, they don't face a normal trial because it would be unfair.

Instead a different type of hearing happens to decide if the person has done the act.

This isn't the same as deciding if they have committed a crime.



We are thinking about how to change the law about people who are unfit to plead.

We have some ideas.

We would like to know what you think about our ideas.



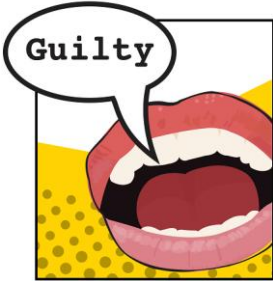
We have written a long consultation paper.

What you are reading is a very short summary of our main ideas.

This will tell you which parts of the consultation paper to look at if you want more detailed information.

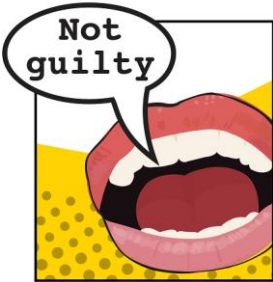
What normally happens if a person is accused of committing a crime?

Normally if a person is accused of committing a crime then they will have to say if they have committed the crime or not.



If the person decides that they agree that they have committed the crime, they might “plead guilty.”

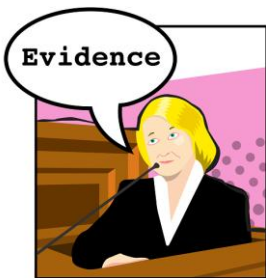
Then the court will decide how to punish the person. And try to help the person not to commit crime again.



If the person decides that they didn't commit the crime then they might “plead not guilty.”

Then there will be a trial.

A trial is where people come to court to say what they know about the crime.



What people say in the trial about the crime is called “evidence”.



A special group of people at court will listen to all the evidence.

These people are called “the jury”.

The jury will decide if the person committed the crime or not.



When the jury decide this they think about three things.

1. What the person did at the time the crime was committed.
2. What the person was thinking at the time the crime was committed.
3. If there are any special reasons why the person is not guilty of a crime. For example, maybe they did something by accident. Or perhaps they did something to defend themselves.

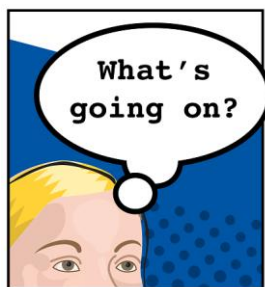


If the jury decide that the person has committed the crime the jury will find them “guilty”. Then the court will decide how to punish the person. And try to help them not to commit crime again.



If the jury don't think the person committed the crime then they will find the person “not guilty.” Then the person is free to go.

People who are unfit to plead



Some people who are accused of committing a crime find it very difficult to understand some of the things in court.

For example, they cannot understand the evidence.

These people are called “unfit to plead”.



If a person is “unfit to plead” they don’t have to say if they are guilty or not guilty.

Instead, the jury have a special hearing to decide what the accused person did at the time other people say the crime was committed.



If the jury decides the person did the act then the judge will decide what should happen to the person.

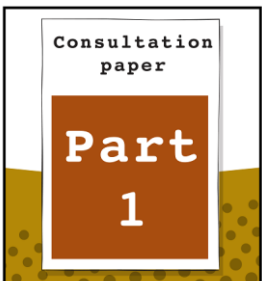
The judge might decide that the person needs to go to hospital if they are ill and need help to get better.

He can also decide that the person doesn’t need to go to hospital but needs to be looked after by a social worker or probation officer. And perhaps needs to be treated by a doctor.

When this happens the person is not found “guilty” and is not punished. But the person still loses their freedom if they are sent to hospital.



If the jury decides the person didn’t do the act, they are found “not guilty.” Then the person is free to go.



For more information about this please see part 1 of the consultation paper.

The test to decide who is unfit to plead



The test used to decide if someone is unfit to plead is very old.

The test asks if the accused person can understand certain things.

If the accused person cannot, they are unfit to plead.

What we think is wrong with the test

We think the test doesn't work very well at the moment.

The test doesn't ask if the accused person can take part properly in the trial.

Because of this some people who cannot make decisions properly in court are made to have a normal trial.

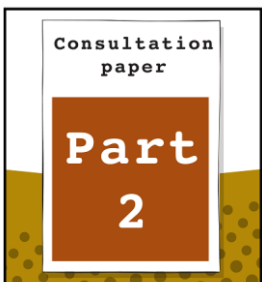


Some people could make decisions properly in court if they had some extra help.

But because of the test these people are called unfit to plead.

This means they cannot have a normal trial.

This is unfair.



For more information about this please see part 2 of the consultation paper.

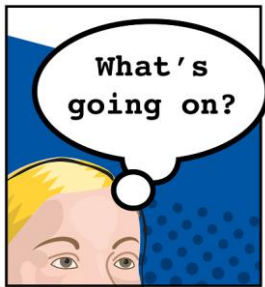


Our ideas for changing the test



If an accused person cannot take part in their trial properly, we think the trial is not fair.

Being able to make decisions is important to being able to take part.



The test used now for deciding whether a person is unfit to plead depends on what they can understand.

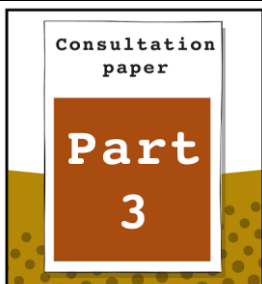
But it does not look at whether the person can make decisions.



OUR IDEA

We think that a better test would be if a person can make decisions about what is happening in court. We think this depends on:

1. If they can understand the information they need to make the decision;
2. If they can remember that information;
3. If they can use the information to make a decision; and
4. If they can tell their lawyer about the decision.



For more information about this please see part 3 of the consultation paper



Some people might only be able to make decisions with extra help.

For example, if they have someone next to them to explain what is happening in court.

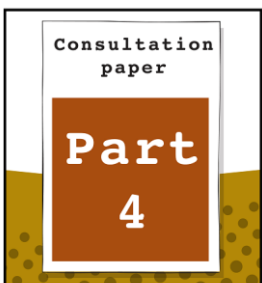
If a person is helped in this way, they have “special measures.”



OUR IDEA

- We think that more people should have this extra help. This will mean more people can take part in their trial instead of being called unfit to plead.
- We think that when a judge has to decide if a person can make decisions, he should think about what extra help he can give them which would help them make decisions.

We want to hear if you have any ideas about what things might help someone to take part in their trial instead of being called unfit to plead.



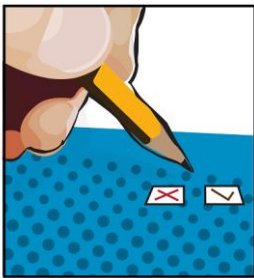
For more information about this please see part 4 of the consultation paper.



At the moment a court can only say that a person is unfit to plead if two doctors say so. One of those doctors must be a psychiatrist. Normally they are both psychiatrists.

OUR IDEA

We think that this should stay the same.



OUR IDEA

We think it would be good for psychiatrists to use the same test in every case when they meet someone who might be unfit to plead.

The test would help the psychiatrist to work out how much the person understands about what happens in court. And if they can make decisions in court.

The hearing for people found unfit to plead

What we think is wrong with the hearing



We think that the special hearing for someone who is found unfit to plead doesn't work very well.

This is because at the hearing the jury usually only thinks about what the accused person did. But not what they were thinking at the time.

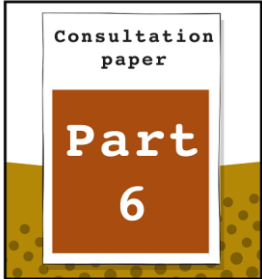


This can be unfair. For example, if the accused person did what they did accidentally or for a good reason.



It can also be unfair because sometimes what someone does is not a crime unless they know or think something when they do the act.

For example, if Amy gives John money that she has stolen, it is a crime for John to take that money. But only if John knows or thinks the money could be stolen. At the moment the special hearing can decide that John took the money. Even if he is not guilty of a crime because he didn't know the money was stolen. The special hearing can decide John did the act, even though he may not have committed a crime.



For more information about this please see part 6 of the consultation paper.

Our ideas for changing the hearing for someone who is unfit to plead



OUR IDEA

We think that the hearing should talk about what the accused person did AND must always take into account what they were thinking at the time AND if there were any special reasons why they did the act.



At the moment if a person is unfit to plead they cannot complain that their hearing is not a fair trial under article 6 of the European Convention on Human Rights.

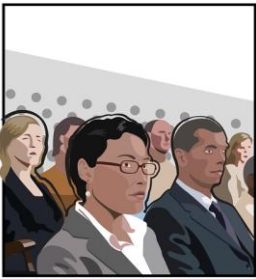
But a person who has a normal trial can.

We don't think this is fair.



OUR IDEA

We think that a person who is having a special hearing because they are unfit to plead should have the same rights as someone having a full trial.



Sometimes a person might have done the act because they had a mental disorder at the time. We think it is important that the jury should think about this.



OUR IDEA

The jury should be allowed to say that a person is not guilty but it is because they had a mental disorder at the time. This is a “special verdict”.



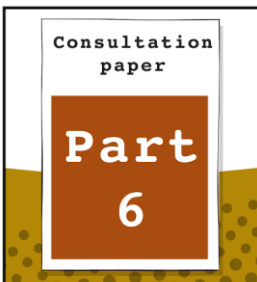
If the jury decides the person is not guilty because of a mental disorder, a judge has to decide whether the person should go to a hospital.



OUR IDEA

We think that at the end of the hearing, the jury should be allowed to decide either:

1. the person did the act and there is no special reason to say they are not guilty,
- or**
2. the person is not guilty,
- or**
3. the person is not guilty because they had a mental disorder at the time.



For more information about this please see part 6 of the consultation paper.

Contacting us

We would like to know your thoughts about what we have suggested in our consultation paper.

Please let us know by 27 January 2010.

There are different ways of contacting us about this paper:



Email: criminal@lawcommission.gsi.gov.uk



Phone: 020 3334 0275



Post:

Criminal Law team
Law Commission
Steel House
11 Tothill Street
London
SW1H 9LJ