

disorder to unjust criminal justice proceedings which they cannot understand or fully participate in. Where an accused is deemed unable to do any one of these then he or she should be considered unfit to plead and can be dealt with under the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, usually by holding a trial of the facts and then, if convicted, considering disposal options such as a hospital order, supervision or an absolute discharge.

The fundamental principle of an individual's right to defend themselves should not be undermined without proper consideration. On the other hand, many professionals are of the opinion that the current system sets too high a threshold with the result that too few mentally disordered offenders are found unfit to plead.<sup>4</sup> In the USA, around 10% of offenders are considered to 'lack competence to stand', but in England and Wales that figure is much lower.<sup>1</sup> One of the reasons for this is that, strictly speaking, the current criteria focus almost exclusively on cognitive ability rather than decision-making capacity, with little account being paid to suggestibility, memory impairment, the ability to give evidence in court, the impact of psychosis or of cultural barriers.

In their report, the Law Commission propose a new legal test much more closely aligned with the capacity test recently enshrined in the Mental Capacity Act 2005.<sup>1</sup> Under the new provisions an accused would need to demonstrate that they understood the information relevant to the decisions that he or she would have to make in the course of the trial, retain that information, use or weigh that information as part of the decision-making process and communicate his or her decisions. Such a test should be acceptable to psychiatrists, as it simplifies the requirements and largely mirrors the capacity test with which we are all now familiar. However, such a change could have significant cost and resource implications. The new system could see many more people assessed by psychiatrists and any corresponding increase in compulsory admissions could have a significant impact on forensic services, although the cost might be offset by a reduced number of custodial sentences. The Law Commission's final recommendations, expected later this year, are anticipated with great interest.

- 1 Law Commission. *Unfitness to Plead* (Consultation Paper No 197). Law Commission, 2010.
- 2 *R v Prichard* (1836) 7 C & P 303.
- 3 Akinkunmi AA. The MacArthur Competence Assessment Tool – Fitness to Plead: a preliminary evaluation of a research instrument for assessing fitness to plead in England and Wales. *J Am Acad Psychiatry Law* 2002; **30**: 476–82.
- 4 Rogers TP, Blackwood N, Farnham F, Pickup G, Watts M. Reformulating the law on fitness to plead: a qualitative study. *J Forensic Psychiatry Psychol* 2009; **20**: 815–34.

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doi: 10.1192/pb.36.4.155a

### Exposure to psychiatry in foundation years may improve recruitment and retention

On reading the article by Barras & Harris,<sup>1</sup> I recognised one of the trainee's comments as my own. This comment was written merely weeks into my core trainee year 1 and related to the reaction of hospital consultants to my choosing psychiatry as a career (during my foundation 2 year, FY2). I would like to

elaborate further on my experience as a foundation trainee in acute hospital medicine relating to psychiatry, and suggest what improvements could be made to the current system to boost recruitment and retention.

When I was an FY2 trainee, I was keen for the opportunity to undertake a 4-month rotation in psychiatry. Despite stating this preference, I was not allocated to the specialty and instead I completed FY2 jobs in accident and emergency, orthopaedics and intensive care. Although I was initially disappointed with this combination, it proved to be an extremely valuable learning opportunity which enabled me to realise and understand the vast overlap between psychiatry and acute hospital specialties. I observed trauma patients during my orthopaedic job who had sustained massive injuries from 'failed' suicide attempts. I saw numerous psychiatric presentations in the accident and emergency department. Even intensive care provided me with chances to understand the consequences of psychiatric illness, ranging from irreversible hypoxic brain damage following hanging in a patient with depression to end-stage liver failure in a patient with alcohol dependence.

Many medical students and foundation doctors who have enjoyed the acute hospital setting during their foundation years may be reluctant to consider a specialty such as psychiatry. This may be particularly true if they have not worked in a psychiatric specialty during this time. Perhaps a solution would be to encourage deaneries to provide 3-month foundation posts instead of 4-month posts, so as more foundation doctors are exposed to psychiatry. It would also be worth considering whether these posts should be partly hospital based and have a particular emphasis on liaison psychiatry, so that foundation trainees can observe directly the important role of the psychiatrist in working collaboratively with medical colleagues. Barras & Harris noted that 5.0% of trainees had stated they had considered leaving psychiatry because they wished they worked in a different specialty.<sup>1</sup> At this time when retention rates are falling, perhaps enabling foundation doctors to see for themselves the diversity of psychiatry and how it integrates with acute hospital medicine is key.

- 1 Barras C, Harris J. Psychiatry recruited you, but will it retain you? Survey of trainees' opinions. *Psychiatrist* 2012; **36**: 71–7.

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doi: 10.1192/pb.36.4.156

### Revealing our religion/atheism in the witness box

I gave evidence in a criminal court recently about one of my in-patients, with the patient watching from the dock. When the clerk asked me, 'Do you have a religion?', I answered 'No' and was given the words to read to make a solemn affirmation ('I do solemnly, sincerely and truly declare and affirm that the evidence which I shall give, shall be the truth, the whole truth and nothing but the truth'), rather than taking the oath ('I swear by Almighty God that the evidence . . .')<sup>3</sup> on a religious text. So

a. The Oaths Act 1978 directs that the oath/solemn affirmation shall start 'I swear by Almighty God that'/'I do solemnly, sincerely and truly declare and affirm that', 'followed by the words of the oath prescribed by law'. The words to follow cannot be found elsewhere in the Act, in another statute or in the rules of the court. In 1927 the King's Bench Judges approved the following form of oath for use in civil and criminal courts: 'the evidence, which I shall give, shall be the truth, the whole truth and nothing but the truth'. This is still in use today.