THE UNIVERSITY *of* EDINBURGH

Fitness to plead: the role of neuropsychological assessment and the experience of legal professionals

Susan Harris

Submitted in part fulfilment of the degree of Doctorate in Clinical Psychology
The University of Edinburgh
July 2021

DClinPsychol Declaration of Own Work

Name: Susan Harris

Title of Work: Fitness to plead: the role of neuropsychological assessment and the experience of legal professionals

I confirm that this work is my own except where indicated, and that I have:

- Read and understood the Plagiarism Rules and Regulations
- Composed and undertaken the work myself
- Clearly referenced/listed all sources as appropriate
- Referenced and put in inverted commas any quoted text of more than three words (from books, web, etc.)
- Given the sources of all pictures, data etc. that are not my own
- Not made undue use of essay(s) of any other student(s), either past or present (or where used, this has been referenced appropriately)
- Not sought or used the help of any external professional agencies for the work (or where used, this has been referenced appropriately)
- Not submitted the work for any other degree or professional qualification except as specified
- Acknowledged in appropriate places any help that I have received from others (e.g. fellow students, technicians, statisticians, external sources)
- Complied with other plagiarism criteria specified in the Programme Handbook
- I understand that any false claim for this work will be penalised in accordance with the University regulations
- Received ethical approval from the School of Health in Social Science, University of Edinburgh

  OR
- Received ethical approval from an approved external body and registered this application and confirmation of approval with the School of Health in Social Science's Ethical Committee

Signature: Susan Harris **Date**: 26/07/2021

Please note:

- If you need further guidance on plagiarism, you can:
  - Speak to your personal tutor or supervisor
  - View university regulations at **http://www.ed.ac.uk/schools-departments/academic-services/policies-regulations**
- Referencing for most assessed work should be in the format of the BPS style guide, which is freely available from the BPS web site

ACKNOWLEDGEMENTS

First, I would like to thank my supervisors, Dr Suzanne O'Rourke, and Dr Andrew Wood. Thank you for your patience, support, and guidance throughout this project. The ups and downs of the past three years would have been more challenging without your support. Thank you also to Rowena Stewart for your patience and expertise during the early stages of this research.

I would also like to thank the participants who volunteered their time to participate in this study. Your willingness to share your experiences and knowledge of this area was hugely valued and this project would not have been possible without your assistance.

Thank you to my family and friends for your ongoing love and support over the last three years. You've walked every step with me, kept me going and reminded me what was important in life. Thank you for making me laugh when I needed to most. To my fellow trainees, thank you for all the memories, it has been an honour to train alongside you all and I am so grateful to have made friends for life.

This thesis is dedicated to parents. Without their encouragement, unfailing support, and words of wisdom from the very start, none of this would have been possible. You've always believed in me, especially when I didn't believe in myself. Words aren't enough.

Table of Contents

RESEARCH PORTFOLIO ABSTRACT

Findings of unfitness to plead remain extremely rare within the United Kingdom, yet prevalence of mental health and cognitive difficulties are significantly higher in forensic populations compared to general populations. The evaluation of an individual's fitness to plead (FtP) involves the interface between legal professionals and healthcare professionals (known as expert witness within the legal system). Expert witnesses are instructed by legal professionals to carry out assessments, and commonly use neuropsychological assessment tools to aid in their clinical decision making. Legal professionals bear the significant responsibility of initially identifying potentially vulnerable individuals who may be unfit to plead (UtP).

Previous literature has mainly focused on the use of the Wechsler Adult Intelligence Scale (WAIS) to aid in the determination of an individuals fitness to plead. A meta-analysis was conducted to evaluate differences between those deemed fit to plead (FtP) and those deemed unfit to plead (UtP), along with the use of performance validity tests in this population. A random effects model indicated individuals deemed FtP scored significantly higher than UtP defendants across all indices and 9 subtests. Differences between groups translated to a difference of approximately five standard scores or one scaled score between groups. Results of this meta-analysis highlight both the utility and shortcomings of the WAIS in informing the determination of FtP.

Whilst much commentary exists regarding the quality and content of the assessments performed by expert witnesses, there has been a dearth of research exploring legal professionals experience of this process. This is particularly troublesome given legal professionals' central role in this process, specifically in the initial identification of potentially vulnerable individuals. Therefore, an explorative study drew upon reflexive thematic analysis to investigate their experiences. Ten legal professionals with significant experience of fitness to plead within the criminal justice system were interviewed about their experiences of this system. Analysis generated three themes: *Catching cases, Finding ways to work together* and *Not quite there yet.* Six subthemes were also generated. Results are discussed, along with study limitations, implications of findings and suggestions for future research.

LAY PERSON SUMMARY

An individual is unfit to plead in a court of law when they cannot understand criminal proceedings and cannot instruct their legal counsel appropriately. Mental health or cognitive difficulties can significantly impact on an individual's fitness to plead. These vulnerabilities must be first identified by the legal professional involved, then an assessment must be completed by an expert witness. An expert witness can be either a psychiatrist or practitioner psychology.

Studies show that expert witnesses commonly use structured psychological tests to guide their decision making around an individual's fitness to plead. Research has shown that the most common test used by expert witnesses is the Wechsler Adult Intelligence Scale (WAIS) and several studies have compared the results of this test between individuals found fit to plead and those found unfit to plead. A meta-analysis was performed to compare results from these studies and found that those who were deemed fit to plead performed significantly better than those deemed unfit to plead. This meta-analysis constitutes the first journal article.

Legal professionals bear the responsibility of initially identifying individuals who may be unfit to plead. The second journal article is an empirical study which was performed to explore legal professionals experience of fitness to plead throughout their careers. Semi-structured, in-depth interviews were conducted with ten legal professionals and participants accounts were analysed to examine common narratives and generate themes. These themes reflect the complexity of the current system of fitness to plead and how legal professionals felt their many years of career experience helped them navigate this system. These results are discussed in relation to existing literature, along with the clinical implications of the findings.

Journal Article 1: Meta-Analysis[1]

Meta-analysis of the cognitive performance of defendants: Comparisons between defendants found fit to plead and unfit to plead on the Wechsler Adult Intelligence Scales

Susan Harris [ab], Dr Andrew Wood [b], Dr Suzanne O'Rourke [a]

[a] Clinical and Health Psychology Department, University of Edinburgh, UK

[b] Clinical Health and Neuropsychology Service, NHS Lanarkshire, UK

Corresponding author: Susan Harris, NHS Lanarkshire, UK, email: susan.harris@lanarkshire.scot.nhs.uk

[1] Written in accordance with submission guidelines for Psychology, Public Policy and Law (Appendix 1 for author guidelines)

ABSTRACT

Internationally, the Wechsler Adult Intelligence Scale (WAIS; Wechsler, 2008) is commonly used to aid in the determination of fitness to plead (FtP), yet the cognitive profiles of defendants deemed fit or unfit to plead remain poorly understood. This meta-analysis aimed to systematically evaluate the similarities and differences in performance on the WAIS between defendants deemed fit to plead (FtP) and unfit to plead (UtP), along with the use of performance validity tests in this population. Performance was compared between FtP (n= 979) and UtP (n= 690) defendants in eleven studies (n=1669). Full Scale IQ, Verbal IQ, Performance IQ and individual subtests were meta-analysed using a random effects model that indicated individuals deemed FtP scored significantly higher than UtP defendants across all indices and 9 subtests. The largest effect was observed in the comprehension subtest. Both groups scored within the 'low average' and 'borderline' classifications on most subtests, translating to a difference of approximately five standard scores or one scaled score between groups. This review extends previous literature that has reported significant differences only in Full-Scale IQ and, to our knowledge, this is the first meta-analysis examining WAIS subtest performance in this population. These findings are consistent with previous literature that suggest language and working memory are of central importance in the determination of FtP. Findings from this meta-analysis highlight both the utility and shortcomings of the WAIS in informing the determination of FtP.

Keywords: Fitness to Plead; Competency to Stand Trial; Neuropsychological Assessment; Cognition; Wechsler Adult Intelligence Scale (WAIS)

Word Count: 10,297

Conflicts of interest: None

Disclosure Statement: This research did not receive any grants from public, commercial, or not-for profit sector funding agencies.

INTRODUCTION

The evaluation of an individual's fitness to plead (FtP) involves the provision of expertise by health professionals to inform the legal process (Peay, 2012). While differences exist in the specific legal classifications of FtP (commonly referred to as competency to stand trial/fitness to stand trial or trial competence), the overarching assumptions of most jurisdictions is that an individual must both understand the nature of criminal proceedings and have the ability to instruct counsel appropriately (Murrie & Zelle, 2015). Whilst the ultimate determination of FtP is legal, the determination frequently relies heavily on the assessment of a defendant prior to trial. This assessment is commonly conducted by forensic mental health professionals; referred to as *expert witnesses* in legal settings (Fabian et al., 2011). Expert evidence in legal settings had traditionally been provided by psychiatrists, who commonly base their opinion on clinical interview only (Day et al., 2000). In the last 20 years, the unique contribution of psychology in the assessment of FtP has been acknowledged, more specifically, the valuable contribution of neuropsychological evaluation (Lally, 2003; van der Wijngaart et al., 2015).

Thorough and accurate assessment of individuals prior to trial is crucial due to the potential implications for the defendant, victims, legal and healthcare services (Gowensmith, 2019). Inaccurate conclusions can deny a defendant who is FtP the right to a fair trial and, more commonly, can force a defendant who is unable to participate fully to undergo trial unjustly (Murrie et al., 2020). Whilst agreement exists that an individual should be fit to plead (FtP) before proceeding to trial, views on how fitness is operationalised, and indeed assessed, remain contentious (Brown, 2019). Accurate assessment of FtP involves the accurate interpretation of legal criteria; however, research has consistently demonstrated that this interpretation is highly variable between expert witnesses (Brewster et al., 2008).

Much of the literature addressing FtP has examined a range of demographic and clinical characteristics of defendants such as employment status, marital status and current psychiatric diagnosis (Pirelli, 2011). A psychiatric diagnosis of a psychotic illness is one of the most common

difficulties of those found unfit to plead (UtP) (Cabeldue et al., 2020; Heller et al., 1981; Viljoen & Zapf, 2002). A large proportion of the literature in the field of FtP has examined the utility of forensic assessment instruments in differentiating defendants who are FtP and those who are UtP (Pirelli et al., 2011). The majority of literature in the field of FtP has been conducted the United States of America (USA) (Pirelli et al., 2011). In this jurisdiction, like others, findings of UtP result in differential legal treatment of defendants, however in the USA this differential treatment may involve the avoidance of particular judicial treatment, dependent on state, such as execution. This highlights how influential FtP assessments can be in the USA (Murrie et al., 2019); potentially in comparison to other jurisdictions. The efficacy of a number of instruments has been examined showing largely promising results for their ability to inform the clinical examination of defendants, such as the Evaluation of Competency to Stand Trial – Revised (ECST-R; Rogers et al., 2004). In the largest meta-analysis in this field to date, the evaluation of FtP was described as an "open-textured, context-specific construct, that cannot be reduced to a fixed set of psycholegal abilities" (Pirelli et al., 2011, p. 4). The addition of cognitive assessment of defendants has been recognised as adding valuable data to the overall assessment of an individual's FtP (White et al., 2014). However, any structured assessment tool should be used in the context of wider information gathering including clinical interview and behavioural observation, rather than in isolation (Pirelli, 2011).

Fitness to Plead and Neuropsychological Assessment

Assessment of cognition has been widely accepted as being an important factor in the assessment of FtP (White et al., 2012), and research into the role of cognitive and neuropsychological assessment of defendants has been growing in recent years (McRae, 2018). In recognition of the role of cognition in the overall determination of FtP, measures of intellect are widely used by clinicians internationally and can provide helpful data in the overall assessment of a defendant (Saklofske et al., 2003).

Little experimental work has examined the role of cognitive abilities associated with UtP, and authors in this field have highlighted that much of this research has been limited by small sample sizes and

the often insufficient detail extracted concerning cases (e.g. types of defendants and assessors etc) (Pirelli, 2011). However, experts have hypothesised the importance of executive functioning, working memory, attention and receptive language (Bush et al., 2017; Drogin, 2007; Melton et al., 2007). Furthermore, memory and attention are proposed as being central to an individual's ability to follow legal proceedings (Rothschild, Erdmann, & Parzeller, 2007), while receptive and expressive language skills are thought to be fundamental in an individual's competence to instruct their legal representation (Mossman, 2007). One systematic review highlighted that domains such as processing speed, visuo-perceptual skills and verbal memory differentiated FtP and UtP groups (White et al., 2014). Whilst the importance of cognition in the determination of FtP is recognised, further work is needed to examine the relationship.

The inclusion of performance validity tests (PVTs) are of crucial importance to ensure the accuracy of findings on neuropsychological tests (Green, 2007). Whilst instances of malingering vary widely across forensic populations (Gouvier et al., 2003), the inclusion of at least one PVT has been recommended in forensic populations (Green et al., 2012). Furthermore, the use of PVTs in clinical research are imperative, given that effort has been highlighted as a significant mediator of results in neuropsychological assessments (Wisdom et al., 2014).

Use of Wechsler Adult Intelligence Scale

The Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV; Wechsler, 2008) is the latest version of the most widely used test of intelligence dating back to the Wechsler-Bellevue Intelligence Scale (Wechsler, 1939). The Wechsler Scales continue to be widely used by psychologists internationally (Kaufman & Lichtenberger, 2005), with widespread use in forensic settings (Lees-Haley et al., 1996). Studies examining the practice of clinicians tasked with assessments of FtP, found that approximately one third of evaluations of FtP use a standardised assessment tool (Murrie et al., 2020), of which the WAIS has been found to be the most popular (Archer et al., 2006; van der Wijngaart et al., 2015; Blake & Ogloff, 2020). Neal and Grisso (2014) specifically examined the use of structured assessment tools by professionals worldwide, including forensic psychiatrists and

clinical psychologists. The authors reported that referrals for assessment of FtP were the most common referrals from courts, with 58% of clinicians reporting use of a standardised assessment tool to aid their decision making. Sixty five standardised assessment tools were reportedly used by professionals, however the most commonly used was the WAIS, with around one in ten clinicians using this tool, rather than a specific competency measure, indicating that the WAIS is the dominant decision-making tool used by clinicians in determinations of FtP.

Intellectual functioning and FtP

Some research has examined the relationship between intellectual functioning and FtP. Studies have concluded that individuals with lower scores on intelligence tests are more likely to be found UtP (Anderson & Hewitt, 2002; Everington, 1990; Parker, 2009; Ryba & Zapf, 2011; Siegert M. & Weiss K.J., 2007; Simon, 1987). However, the utility of applying a battery approach and reporting only Full-Scale Intelligence Quotient (FSIQ) has been a source of debate, given the disparate abilities measured under the umbrella term of FSIQ (McDermott et al., 1990). It is common in clinical practice for psychologists to use particular subtests of the WAIS to assess specific abilities rather than intellectual functioning as a single construct (Kaufman & Lichtenberger, 2005). Clinicians may administer specific subtests, derived from batteries, rather than a full battery to inform their judgement, often guided by the referral question requesting the assessment of abilities associated with FtP (Vanderploeg, 2014). The interpretation of performance at a subtest level is crucial as these cognitive components are dissociable, meaning an individual may be impaired in one but not another. The reporting of ‘general intelligence’ as a compound score has long been a source of criticism (e.g. Ardila et al., 2000). Nonetheless, expert witnesses appear to rely on both FSIQ and individual subtest performance of the WAIS, therefore, further investigation is warranted to examine the performance of defendants on specific subtests of intellect, along with index scores (Pirelli, 2011).

Aims

The main aim of this meta-analysis was to determine the degree to which defendants that are determined to be FtP, and those determined UtP, differ in their performance on the most widely

used cognitive battery, the WAIS (Wechsler, 2008). Previously, only differences in index scores have been examined in this population, therefore this meta-analysis aimed to investigate both index score and subtest score differences between FtP and UtP defendants in the WAIS and evaluate the used of performance validity tests alongside this tool. While other measures of intellectual functioning are available, the dominance of the WAIS in the literature and clinical practise, and a wish to minimise heterogeneity in an area with few published studies, informed our choice to include only those studies that examined a version of the WAIS. Consolidating standard mean differences (SMDs) from comparable versions of a standardised battery, significantly reduces heterogeneity and increases the precision of meta-analytic estimates, compared to when attempting to combine results from various cognitive measures. Comparing cognitive performance across only one battery, allows for valid comparisons of differences between FtP and UtP defendants due to the theoretical and psychometric consistency. To our knowledge, this is the first study to specifically meta-analyse performance on individual WAIS subtests across FtP and UtP defendants.

METHOD

Inclusion Criteria

All studies published in English between 1980 and January 2021, which investigated the role of neuropsychological tests and the determination of FtP were included. Studies eligible for inclusion were those which used Wechsler Adult Intelligence Scales (Wechsler, 2008); versions considered were the WAIS-R (Wechsler, 1981), WAIS III (Wechsler, 1997), WAIS IV (Wechsler, 2008) and WASI (Wechsler, 2011). Only studies carried out with adult forensic populations, aged 18 and above, were included. Only studies in which a proportion of the patient sample had been assessed as being UtP were included, e.g., through standardised evaluation or clinical assessment.

Exclusion Criteria

Qualitative studies, case studies and non-English language studies were excluded, as were studies which sampled non-forensic patients and those investigating juvenile defendants. Studies that recruited forensic samples but examined other legal determinations were excluded such as execution cases, insanity in bar of trial, restoration of competence and Miranda rights. Studies that

included only demographic data and clinical data e.g., type of crime, ethnicity etc were also excluded.

Literature search strategy

Literature searches were carried out on the following electronic databases, these produced articles published within the following stated date ranges: Embase Classic (1980 – 11th January 2021), Medline (1980 – 11th January 2021), APA Psych Articles (1980 – 11th January 2021) and PsychInfo (1987 – 11th January 2021). A preliminary search of these databases, along with a search of Prospero were completed to ensure no existing meta-analyses existed on this topic.

The following search terms were then used to search each database;

(FIT* TO PLEAD) OR (UNFIT* TO PLEAD) OR (FIT* TO STAND TRIAL) OR (UNFIT* TO STAND TRIAL) OR (ADJUNCTIVE COMPETENC*) OR (COMPETENC* TO STAND TRIAL) OR (INCOMPETENC* TO STAND TRIAL) OR (CAPACITY TO STAND TRIAL) OR (TRIAL COMPETENC*) AND (COGNITI*) OR (NEUROPSYCHOLOG*) OR (ASSESS*) OR (PSYCHOLOG*) OR (FORENSIC) OR (MENTAL HEALTH) OR (INTELLIGEN*) OR (WECHSLER ADULT INTELLIGENCE SCALE) OR (WAIS) OR (WASI) OR (WECHSLER)

Grey literature was identified by searching the ProQuest database using the same search terms. In addition, the reference sections of included studies that met inclusion criteria were also hand searched. The review was registered on Prospero (registration number: CRD42020215414); the database for systematic reviews and meta-analyses. This review was registered as a systematic review to broadly review cognition in the determination of FtP, however insufficient studies were identified in domains other than intelligence. Two studies that included varying measures of executive functioning were identified (Nussbaum et al., 1998; Simon, 1987), three studies included varying measures of memory (Arredondo et al., 2017; Grandjean, 2006; Nestor et al., 1999). Two studies were identified that measured IQ using assessment tools other than the WAIS (Nussbaum

et al., 1998; Simon, 1987). These studies were excluded to reduce the heterogeneity of varying assessment tools and improve the precision of meta-analytic estimates.

Search and Selection Strategy

This review was designed in accordance with the PRISMA guidelines (Page et al., 2021). All articles produced by the above search strategy were screened as shown in Figure 1. Initially, duplicate articles were removed, then the titles and abstracts of the remaining articles were screened for relevance to the review topic; those not relevant were excluded. Articles identified in the grey literature and all remaining articles were screened using their full texts. Full texts were reviewed based on the inclusion and exclusion criteria. Articles that met inclusion criteria were selected and those that did not were excluded accordingly.

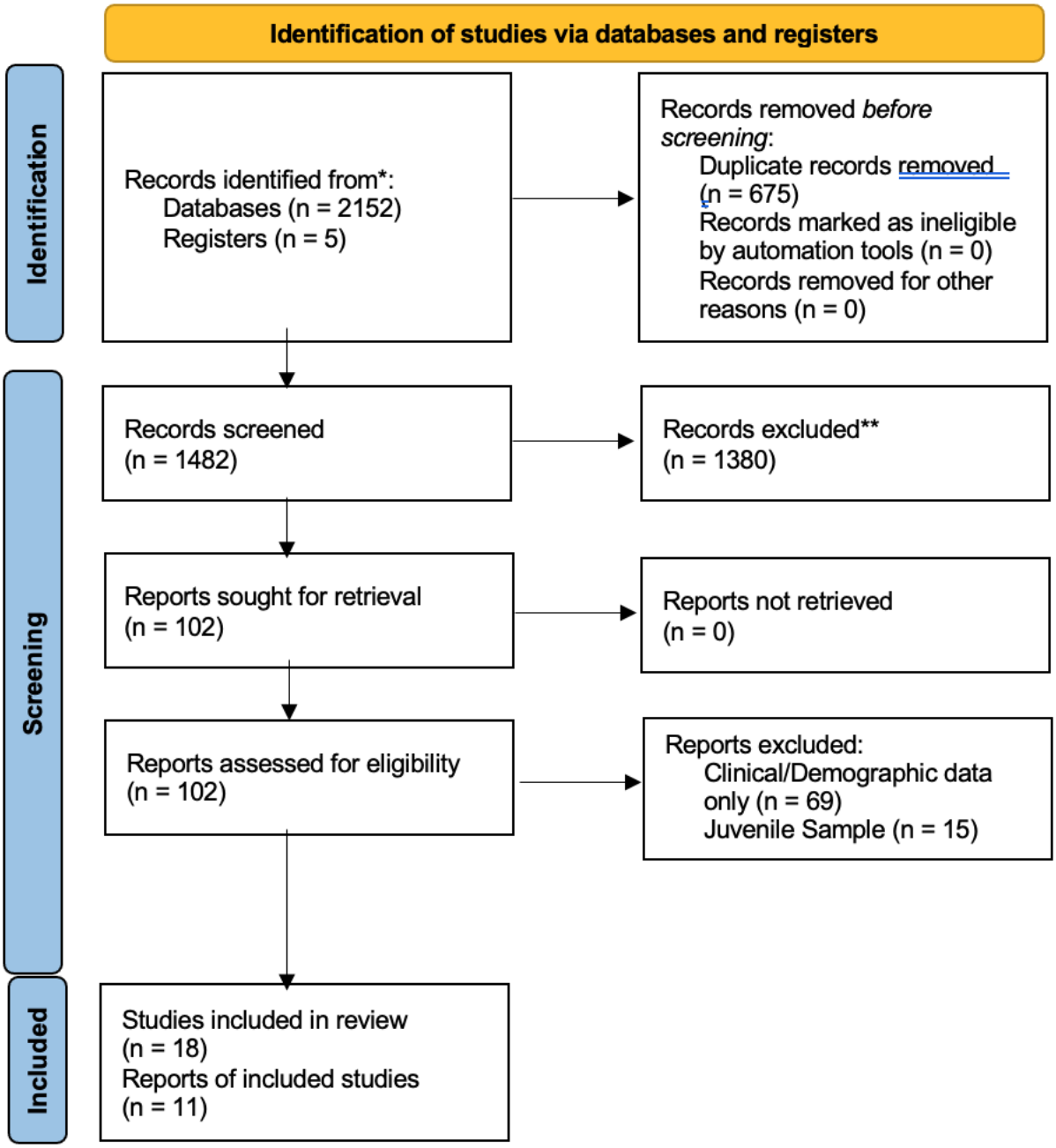

Figure 1: Systematic Search and Selection Process (PRISMA, Page et al., 2021)

Risk of bias assessment

The risk of bias of each included study was assessed using the Pirelli, Zapf and Gottdiener (2011) criteria. These criteria were produced for researchers conducting comparative research regarding FtP and UtP defendants; with criteria being appropriate for all legal jurisdictions. These criteria were produced several years after many of the included articles; however, they have successfully been implemented in other research to provide a structured and thorough review of quality and methodology specific to the FtP literature. In addition to being the first to use criteria, White et al. (2014) undertook a comprehensive review of their efficacy, resulting in a number of amendments which were deemed relevant to the current review. Criteria (1) and (11) were excluded as they were not considered relevant; these referred to publication of multiple manuscripts from one data set (these were screened during the selection process of the current study) and studies of malingering (these studies were excluded from the current review). Pirelli, Zapf and Gottdiener (2011) highlight the need for inclusion and exploration of the 'questionably fit group' in FtP literature in criteria (12); this item was excluded as the current review sought to identify the cognitive characteristics comparing FtP and UtP defendants only.

Ten of the thirteen criteria set out by Pirelli, Zapf and Gottdiener (2011) were therefore employed in the current review. These criteria were: (2) presentation of (a) means, (b) standard deviations and (c) effect sizes; (3) provision of information regarding significant and non- significant findings; (4) data presented continuously where possible; (5) investigation of potential differences between participants and non-participants; (6) use of a suitable competent comparison group; (7) coding of potentially moderating variables; (8) analyses conducted using all available competency criterions; (9) data presented comparatively by competency status and other dichotomies; (10) documented relevant findings for the total sample in addition to the fit and unfit samples; (13) provision of comparative data consistently across (a) static defendant characteristics: (i) age, (ii) ethnicity, (iii) sex, (iv) level of education, (v) employment status, (vi) marital status, (vii) psychiatric diagnosis, (viii) psychiatric history, (ix) competency history, (x) legal history and (b) study-specific variables: (i) date range of data collection, (ii) origin of initial competency decision, (iii) origin of competency decision

used for comparison, (iv) composition of competent comparison group, (v) names and data from assessment tools used, (vi) study setting, (vii) sample's country of origin, (viii) process of participant recruitment and (ix) sample type.

Due to the number and range of criteria, White et al., (2014) contacted a number of experts in the field, carefully selected according to expertise and independence from the development of the original guidelines, to objectively weigh each item in terms of the importance of each guideline (See White et al. (2014) for further details). This process was deemed sufficiently comprehensive and as such, the same weighting system was implemented for the current review. All studies were subject to the above quality assessment by the researcher. To reduce bias, a second independent reviewer scored five of the eleven included papers (45%). Discrepancies were minor and discussed until consensus was reached with any clarification in interpretation of the criteria applied consistently across studies.

Selection of Data

Normative data ranging from approximately 16 to 90 years old is available for all version of the WAIS included in this review (Saklofske et al., 2003). Studies were included if data was available from Full Scale IQ (FSIQ), Verbal IQ (VIQ), Performance IQ (PIQ) or any subtests. Where fewer than two studies cited data for a specific subtest, this was excluded from the analysis.

Much of the data was extracted from studies that used the WAIS-R and WAIS-III, therefore a similar structure was used to that in these versions. The subtests in these versions can be combined to produce standard scores for Verbal IQ (VIQ) and Performance IQ (PIQ). All subtests can then be combined to produce an overall score of FSIQ. All scores were drawn directly from data presented in included studies; no scores were combined/manipulated to produce index scores.

FSIQ is thought to broadly represent general intellectual ability. Verbal IQ (VIQ) is thought to represent one's ability to understand and reason using concepts framed in words and is comprised

of scores from two indices: the verbal comprehension index (VCI) and working memory index (WMI). Performance (IQ) is thought to be a measure of overall visuospatial intellectual ability and is comprised of scores from two indices: the processing speed index (PSI) and perceptual organisation index (POI) (Climie & Rostad, 2011).

Four subtests were included from the Verbal Comprehension Index (VCI). This domain evaluates an individual's ability in verbal reasoning and their use of language to solve novel problems:

1) Similarities: the examinee is asked to detail how two concepts are related, in order to evaluate verbal reasoning
2) Vocabulary: the examinee is presented with words, both visually and orally, assessing word knowledge and ability to verbally express definitions.
3) Information: the examinee is asked factual knowledge questions to evaluate general knowledge
4) Comprehension: the examinee is required to provide solutions to everyday problems, assessing verbal reasoning and social inference

Two subtests were included in the Working Memory Index (WMI). This domain evaluates attention and working memory:

1) Digit Span: the examinee is required to repeat verbally, strings of numbers both forwards, backwards and in sequence, to evaluate attention and auditory working memory
2) Arithmetic: the examinee mentally solves arithmetic word problems without the use of pen and paper, to evaluate attention, auditory working memory, and quantitative reasoning.

Three subtests were included in the Perceptual Organisational Index (POI). This domain evaluates visuospatial abilities, reasoning and problem solving:

1) Block Design: the examinee views model and picture/picture and using two colour, six sided blocks, is required to replicate the design in order to evaluate spatial reasoning.

2) Matrix Reasoning: the participant views an incomplete matrix and is required to select an option that completes the matrix, in order to assess non-verbal reasoning (pattern completion, classification, analogy and serial reasoning).
3) Picture Completion: this subtest asks the individual to identify the missing part of a picture presented visually.

Sufficient data was available to analyse only one subtest within the Processing Speed Index (PSI). This domain evaluates an individual's ability to process simple visual information:

1) Digit Symbol Coding: the examinee is prompted to code symbols with corresponding numbers, in order to assess psychomotor speed, motor coordination, attention and concentration.

One additional subtest was included:

1) Picture Arrangement: the participant is required to arrange cards depicting social events into the correct sequence, in order to assess sequencing, social inference and nonverbal reasoning.

Data extraction

Standard score means, scaled score means and standard deviations were extracted from all included studies for each group (FtP and UtP). Standard scores and scaled scores are age adjusted and standardised to a sample distribution.

Standard scores have a mean of 100 and a standard deviation of 15 (range = 50-150). Scaled scores have a mean of 10 and a standard deviation of 3 (range= 1-19); with higher scores in both being indicative of superior performance. A data extraction table (Table 2) summarises studies included in this meta-analysis. This incorporated components from the Pirelli (2011), risk of bias criteria and more specific study information.

Authors of all included studies were contacted to request any additional data, including those that reported only FSIQ, Verbal IQ and/or Performance IQ. One author provided additional data for a number of subtests.

Meta-Analysis

Individual statistical analyses were completed for each index and subtest. Standardised mean difference (SMD) was employed as the summary estimate for all analyses. Cochrane Guidelines suggest the SMD can be calculated using means and standard deviations of final measurements (Higgins et al., 2019). Means and standard deviations were available in all included papers. For all scales higher scores were indicative of superior performance. The statistical significance level was set at $p < 0.05$. Forest plots were used to illustrate results from analysis of each subtest.

Whilst all scores were from WAIS subtests, the version of the test differed e.g., WAIS-R, WAIS III. Therefore, SMD was used due to the variability of continuous outcome measures. SMDs of 0.2, 0.5 and 0.8 were considered indicative of small, moderate and large effects respectively (Higgins et al., 2019). The equivalent Wechsler standard score and scaled scores to effect sizes are presented in Table 1.

TABLE 1. Effect size and corresponding Wechsler standard and scaled scores

Effect Size	Wechsler Standard Score equivalent	Wechsler Scaled Score equivalent
1	15	3
0.2	3	0.6
0.5	7.5	1.5
0.8	12	2.4

Higgin's I^2 (2002) was employed to denote the impact of heterogeneity on the effect size estimates; with I^2 values of 0, 25, 50 and 75% indicating zero, low, moderate and high heterogeneity respectively. Higgin's I^2 was deemed appropriate over Cochrane's Q Test, given that this test has low power when fewer studies are included in a meta-analysis (DerSimonian & Laird, 1986).

Pooled data for differences in scores between participant groups across studies was calculated using a random-effects model (Higgins & Thompson, 2002). This model was selected due to a high level of expected heterogeneity due to the diversity of studies, including methodological diversity

(variability in test version, test administration and methodological quality) and clinical diversity (variability of participant sample and diversity of clinical settings). Analysis was conducted in Review Manager (RevMan), version 5.4 software (2011).

Additional analyses

Small numbers of studies were included in each analysis, therefore it was not possible to formally evaluate publication bias using a specific statistical test or funnel plot (Macaskill et al., 2001). Instead, identification of an outlier was determined using an approach described by Kreslins (2015). An outlying result was determined by the SMD being three times greater than the next highest SMD in that analysis. If any outliers were identified, a sensitivity analysis was performed by removing this result to determine the impact of outlying results on overall summary estimates.

In addition, it is advised that metanalyses that include unpublished study data should perform sensitivity analyses to detect potential differences in results between unpublished and published data (Schmucker et al., 2017). Therefore, sensitivity analyses were run on analyses that included two or more published and unpublished studies to identify potential differences between these groups. The influence of additional moderators, such as age, years of education, type of Wechsler test and initial assessment of competence could not be performed due to difficulty in obtaining sufficient data from articles.

RESULTS

Selection of studies

Implementation of the above search strategy yielded 2157 results; 675 of which were duplicates. 1482 records were screened on the basis of title and abstract alone and 1380 of these were excluded. 102 full text papers were screened using the inclusion/exclusion criteria and a total of 11 met inclusion criteria for inclusion in the meta-analysis. Meta-regression was not considered as there were fewer than the minimum ten required studies in each analysis in order for an accurate and meaningful meta regression (Higgins & Thompson, 2004).

Study Characteristics

Descriptive characteristics of all included studies are presented below in Table 2. The total sample size of the included studies was N = 1669; a minimum number of 502 participants were included in each analysis. The number of studies included in each analysis ranged from 2 to 8 (median = 5). The overall mean group size in the FtP group was 89 and 62.78 in the UtP group; studies included at least 15 participants in each participant group.

Sex

Higher proportions of males were identified in each included study (approximately 81.4% of total group male). This is consistent with reporting of higher male to female ratios in forensic settings (Tomlin et al., 2020).

Age

Available data suggested mean age differed significantly between FtP and UtP participants (t (6) = -3.16, *p*=0.02); with UtP being older in age. Participant groups had mean ages ranging from 28 to 42.47. The overall participant group mean age was 35.2 years old (SD = 4.08).

Education

Complete data on years of education was available in five included studies. Available data suggested FtP and UtP groups were matched for mean years of education and did not differ

significantly between the groups (t (3) = -0.36, *p*=0.74). Mean years of education ranged from 8.32 to 11.44. The overall estimated mean years of education was 10.67 (SD = 0.94).

Offense Type

Available information on the offense type of participant samples varied widely in studies, including in the detail of specific offences, the number of participants and descriptors used to classify offences. Arredondo (2017) reported a sample of mostly felony crimes (n=29), with the remaining sample committing misdemeanour crimes (n=16). Gannon (1989) noted a range of crimes including 'crimes against persons' (n= 10) to 'property crimes' (n=7), with the majority of the sample committing felonies (n=34). The participant sample included in Hoge (1996) included crimes of felony against person (n=39), felony against property (n=34) and misdemeanour (n=6). Klein's (2010) sample included misdemeanour (n=48), assault and battery (n=127), unarmed robbery and similar crimes (n=104), armed robbery and similar (n=54) and murder (n=38). Lesser reported crimes of violence (n=71), property theft (n=37) and 'other crimes' (n=28). Shields (2004) outlined no specific figures, however reported the sample committed a range of crimes including assault, sex offences and drug offences. White (2016) provided percentage figures of the sample, with the most common offence being 'violent' and the least common being 'fraud'. Grandjean (2004), Nestor (1999), Otto (1998) and Poythress (1998) included no information on the offences of their samples.

IQ

Shields (2004) presented data in two groups; one group in which the FSIQ was determined as above 70, then a group determined as below 70. No other studies in the analysis controlled for IQ below 70; therefore, results from the two groups in this study were pooled. Pooling of the two groups was completed using a formula outlined in the Cochrane Review Guidelines (Higgins et al., 2019).

Performance Validity Tests

Only three of the included studies discuss the use of performance validity tests (PVT). Arredondo (2017) (*N*=62) and Grandjean (2004) (*N*=8) excluded participants from inclusion on the basis of

failure of PVT. White (2016) evaluated the frequency of the use of PVT by clinicians in retrospective data, therefore was unable to exclude those deemed to fail such tests. No other included studies included PVT.

Table 2. Description of studies included in meta-analysis

First Author and Year	Group	N	Sex (% Male)	Age (Years)	Education (Years)	Country and Legal Code	Source Population	Determination of Competence	Test Version	Included FSIQ VIQ PIQ	N Subtests Included
Arredondo (2017)	FtP	30	66.7%	40.00 (12.71)	10.71 (2.28)	USA/Dusky vs. United States	Inpatient Psychiatric Hospital	Expert Witness Reports	WAIS-R, WAIS III, WAIS IV	FSIQ	4
	UtP	15	66.7%	42.47 (12.09)	11.13 (2.00)						
	All	45	66.7	40.82 (12.42)	10.86 (2.17)						
***Gannon (1989)**	FtP	21	-	-	-	USA/Dusky vs. United States	Inpatient Psychiatric Hospital	Competency Assessment Instrument	WAIS-R	FSIQ	2
	UtP	21	-	-	-						
	All	42	-	33.1 (10.74)	11.7 (2.8)						
***Grandjean (2004)**	FtP	18	71.43%	37.78 (13.04)	8.32 (5.77)	USA/Dusky vs. United States	Maximum Security State Hospital	ECST-R[b] Clinical Interview	WASI WAIS-III	FSIQ VIQ PIQ	4
	UtP	30	82.76%	37.38 (13.95)	9.90 (4.97)						
	All	48	81.25%	37.7 (12.87)	9.01 (5.41)						
Hoge (1996)	FtP	42	100%	28 (7.22)	-	USA/Dusky vs. United States	State Psychiatric Hospital	Rated by member of treatment team	WAIS-R	VIQ	-
	UtP	42	100%	32 (8.73)	-						
	All	84	100%	30 (2.83)	-						
***Klein (2010)**	FtP	75	100%	33.39 (11.02)	-	USA/Dusky vs. United States	Maximum Security State Hospital	Clinical Evaluation	WAIS-III	FSIQ VIQ PIQ	8
	UtP	54	100%	33.95 (11.43)	-						
	All	129	100%	30.01 (8.38)	-						
***Lesser (1989)**	FtP	83	100%	30.4 (9.1)	10.5 (2.4)	USA/Dusky vs. United States	Forensic Unit	Legal Process Participation Interview (LPPI)	WAIS-R	FSIQ VIQ PIQ	3
	UtP	52	100%	32.7 (10.1)	10.2 (2.5)						
	All	135	100%	31.3 (9.5)	10.4 (2.4)						
Nestor (1999)	FtP	128	100%	32.24 (11.96)	11.01 (2.71)	USA/Dusky vs. United States	State Maximum Security Hospital	Clinical Evaluation by clinicians then referred back to	WAIS-R	FSIQ VIQ PIQ	-
	UtP	53	100%	39.88 (15.85)	10.27 (2.84)						

	All	181	100%	32.7 (12.33)	-			court for final decision			
Otto (1998)	FtP	197	93.9%	31.33 (9.18)	11.26 (1.98)	USA/Dusky vs. United States	Forensic Psychiatric Unit and Prison	MacCAT-CA[c] and clinical evaluation	WAIS-R	FSIQ	-
	UtP	283	89.4%	36.01 (10.66)	11.44 (2.68)						
	All	480	91.65%	33.67 (3.31)	11.35 (0.13)						
Poythress (1998)	FtP	50	0%	-	-	USA/Dusky vs. United States	Forensic Inpatient Unit and Prison	MacSAC-CD[d]	WAIS-R	VIQ	-
	UtP	38	0%	-	-						
	All	88	0%	32.7 (9.07)	11.6 (2.29)						
***Shields (2004)**	FtP	308	84.18%	-	-	USA/Dusky vs. United States	Correctional Psychiatric Centre	Forensic Psychiatric Evaluation	WAIS-III	VIQ PIQ	8
	UtP	65	84.51%	-	-						
	All	373	84.21%	-	-						
White (2016)	FtP	27	92.3%	35.8 (12.7)	-	Australia/R v. Presser	Archived case files[a]	Clinical forensic evaluation	WAIS-III WASI	FSIQ	-
	UtP	37	88.2%	39.6 (16.0)	-						
	All	64	90.3%	37.7 (2.69)	-						

Index: FtP=Fit to Plead, UtP=Unfit to Plead
*Unpublished Doctoral Theses
[a]Records held by Mental Health Tribunal Service and archived cases by Office of the Director of Public Health Prosecutions (ODPP)
[b]ECST-R: Evaluation of Competence to Stand Trial- Revised
[c]MacCAT-CA: The MacArthur Competence Assessment Tool – Criminal Adjudication (Poythress et al.,)
[d]MacSAC-CD: The MacArthur Structured Assessment of Competence of Criminal Defendants
WAIS-R: Wechsler Adult Intelligence Scale – Revised (Wechsler, 1981)
WAIS-III: Wechsler Adult Intelligence Scale-III (Wechsler, 1997)
WAIS- IV: Wechsler Adult Intelligence Scale-IV (Wechsler, 2008)
WASI: Wechsler Abbreviated Scale of Intelligence (Wechsler, 2011)

Risk of Bias Ratings

See Table 3 for the risk of bias rating for all studies included in the current review. Studies could gain a maximum score of 24.5, the mean was 18.95 (SD = 2.50), with a range of 14 – 22.5. To aid the clear identification of risk of bias, the sum of these scores were used to calculate a percentage score. No categorisation for cut offs was provided, therefore a guide for categorisation was derived from Marsh (2019). A score of 80-100% was categorised as 'low risk of bias' (n = 4 studies); 60-79% was categorised as 'moderate risk of bias' (n = 6 studies); and 59% or less was categorised as 'high risk of bias' (n = 1 study). Four out of the six included published studies were rated as having a 'low risk of bias', whilst three of the five included unpublished studies were rated as having a 'high risk of bias'. Shields (2004) was rated as having the poorest study methodology, whilst Arrendondo (2017) and White (2016) were rated as having the strongest study methodology, scoring 22.5 out of a possible 24.5.

Table 3. Risk of bias assessment of included studies using Pirelli et al., (2011) guidelines for competency research

Guideline	Max. Rating	Arredondo (2017)	Gannon (1989)	Grandjean (2004)	Hoge (1996)	Klein (2010)	Lesser (1989)	Nestor (1999)	Otto (1998)	Poythress (1998)	Shields (2004)	White (2016)
2a	1	1	1	1	1	1	1	1	1	1	1	1
2b	1	1	1	1	1	1	1	1	1	1	1	1
2c	1	1	0	1	0	0	0	0	0	0	1	1
3	1	1	1	1	1	1	0	1	1	1	1	1
4	1	1	1	1	1	1	1	1	1	1	1	1
5	1	0	0	0	0	0	1	0	0	0	0	0
6	1	1	1	1	1	1	1	1	1	1	1	1
7	0.5	0.5	0	0	0.5	0.5	0.5	0.5	0	0.5	0	0.5
8	0.5	0.5	0	0	0.5	0	0.5	0	0.5	0.5	0	0.5
9	1	1	0	0	1	0	0	0	0	1	1	0
10	0.5	0.5	0	0	0	0	0.5	0	0	0.5	0	0.5
13a(i)	1	1	1	1	1	1	1	1	1	1	0	1
13a(ii)	1	1	1	1	1	1	1	0	1	1	0	1
13a(iii)	1	1	0	1	1	1	1	1	1	1	1	1
13a(iv)	1	1	1	1	1	0	1	1	1	1	0	1
13a(vii)	1	1	1	0	0	0	1	1	1	1	0	1
13a(viii)	1	0	0	0	0	0	0	0	0	1	0	1
13b(i)	1	1	0	0	0	1	1	1	0	0	0	1
13b(ii)	1	1	1	1	1	1	1	1	1	0	0	1
13b(iii)	1	1	1	1	1	1	1	1	1	1	1	1
13b(iv)	1	1	1	1	1	1	1	1	1	1	0	1
13b(v)	1	1	1	1	0	1	1	1	1	1	1	1
13b(vi)	1	1	1	1	1	1	1	1	1	1	1	1
13b(vii)	1	1	1	1	1	1	1	1	1	1	1	1
13b(viii)	1	1	1	1	1	1	1	1	1	1	1	1
13b(ix)	1	1	1	1	1	1	1	1	1	1	1	1
Total Score	24.5	22.5	17	17	18	17.5	20.5	18.5	18.5	20.5	14	22.5
Percentage	100%	92%	69%	69%	73%	71.4%	84%	75.5%	75.5%	84%	57%	92%
Risk Descriptor*		Low	Mod	Mod	Mod	Mod	Low	Mod	Mod	Low	High	Low

*Risk Descriptor: 80-100% = low risk of bias (n = 4); 60-79% = moderate risk of bias (n = 6); 59% or below = high risk of bias (n = 1)

Descriptive classifications (Table 4) were used to assist in interpretation (Wechsler, 2008). Table 5 illustrates all analyses and results.

Table 4. Standard score and scaled score classification descriptors

Descriptive Classification	Standard Score range	Scaled Score range
Average	90 – 110	8 – 12
Low Average	80 – 89	6 – 7
Borderline	70 – 79	4 – 5
Extremely low	69 and below	1 – 3

Comparisons of Index scores

Figure 2 summarises the random-effects meta-analysis of index standard score means and standard deviations. Forest plots illustrate performance in FSIQ (Figure 3), Verbal IQ (Figure 4) and Performance IQ (Figure 5). Across all indexes, FtP participants showed significantly higher scores. FtP participants scored within the 'low average' range on all indexes, whilst UtP participants scored within the 'low average' and 'borderline' range. Both groups demonstrated the lowest scores in FSIQ. Sensitivity analyses were conducted in all index analyses and included comparison between published and unpublished studies.

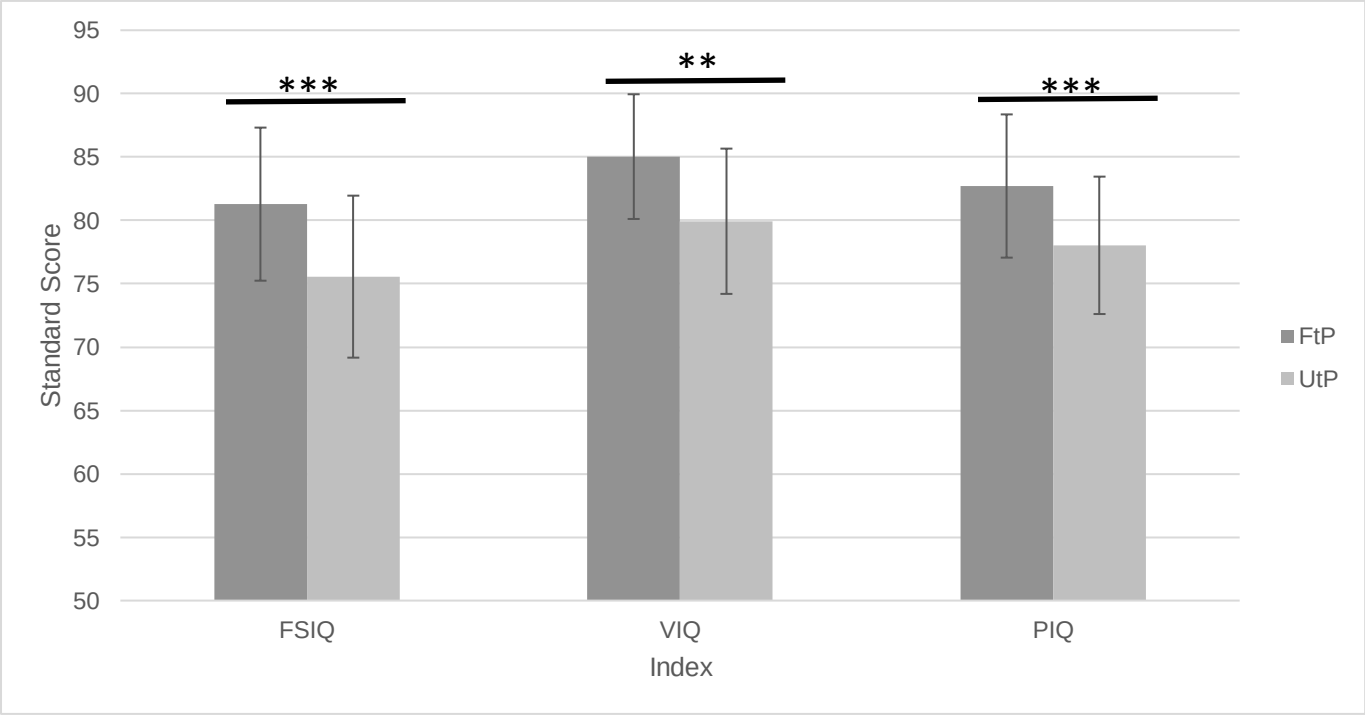

Figure 2: Performance on the Wechsler Adult Intelligence Scale indices in FtP and UtP defendants. Random effects meta-analysis of standard mean differences (SMDs) of standard scores. Graph depicts weighted SMD and standard deviation for each subtest with significance of the effect sizes highlighted (*p<.05, **p<.01, ***p<.001). Thin bars represent standard score confidence intervals.

Table 5. Summary of domains and effect sizes included in meta-analysis of WAIS indices and subtests

Index	Subtest	Number of studies	Combined FtP N	Combined UtP N	FtP Mean	UtP Mean	Effect Size	Effect Size CI	Effect Size *p* value	I^2
FSIQ	-	8	579	545	81.28	75.56	0.31***	(0.16, 0.45)	<0.001	20%
VIQ	-	7	704	334	85.03	79.93	0.32**	(0.12, 0.52)	0.002	49%
PIQ	-	5	612	254	82.71	78.03	0.35***	(0.20, 0.50)	<0.001	0%
VCI	Similarities	5	446	178	8.13	6.26	0.38*	(0.05, 0.71)	0.02	58%
	Information	2	383	119	6.89	6.64	0.12	(-0.16, 0.40)	0.20	40%
	Vocabulary	4	426	160	6.16	4.86	0.24*	(0.05, 0.43)	0.01	0%
	Comprehension	4	442	170	9.17	6.75	0.50***	(0.31, 0.70)	<0.001	0%
WMI	Digit Span	2	383	119	7.39	6.31	0.41***	(0.20, 0.62)	<0.001	0%
	Arithmetic	2	383	119	6.03	5.31	0.27**	(0.06, 0.48)	0.01	0%
POI	Block Design	4	488	179	6.85	5.85	0.30***	(0.12, 0.48)	<0.001	0%
	Matrix Reasoning	4	425	158	6.90	6.31	0.27*	(0.04, 0.49)	0.02	16%
	Picture Completion	3	466	202	6.77	5.89	0.31***	(0.14, 0.49)	<0.001	0%
PSI	Digit Symbol Coding	3	466	191	5.21	3.65	0.93	(-0.06, 1.93)	0.07	96%

	Picture Arrangement	3	401	149	7.01	6.03	0.41***	(0.21, 0.61)	<0.001	0%

Index: FSIQ=Full Scale IQ; PIQ=Performance IQ; VIQ=Verbal IQ; VCI=Verbal Comprehension Index; WMI=Working Memory Index; POI=Perceptual Organisational Index; PSI=Processing Speed Index
CI: Confidence Interval
*p<.05; **p<.01; ***p<.001.
Effect sizes: 0.2, 0.5 and 0.8: small, moderate and large effects

Comparisons of Full-Scale IQ

FtP participants scored significantly higher across studies in FSIQ (Figure 3), with FtP scoring in the 'low average' range and UtP participants scoring in the 'borderline' range. Low heterogeneity was detected across studies, indicating that the small effect size observed was unlikely to be determined by chance (I^2 = 20%). The overall SMD was d = 0.31 (95% CI 0.16, 0.45; z = 4.06, p < 0.0001); a difference of 5 standard scores.

In the FSIQ analysis (Figure 3), the SMD reported by Gannon (1989) was identified as an outlier as it was substantially higher than the next SMD reported in this analysis; therefore, a sensitivity analysis was completed. The removal of this study reduced the overall SMD to d=0.25 (95% CI -0.13, 0.38; z = 3.99; p < 0.0001); a difference of 4 standard scores, and reduced heterogeneity (I^2 = 0%), with the differences observed between FtP and UtP remaining significant.

A sensitivity analysis to remove unpublished studies reduced the overall SMD to d=0.27 (95% CI 0.10, 0.44; z = 3.99; p = 0.002) and decreased heterogeneity (I^2 =11%).

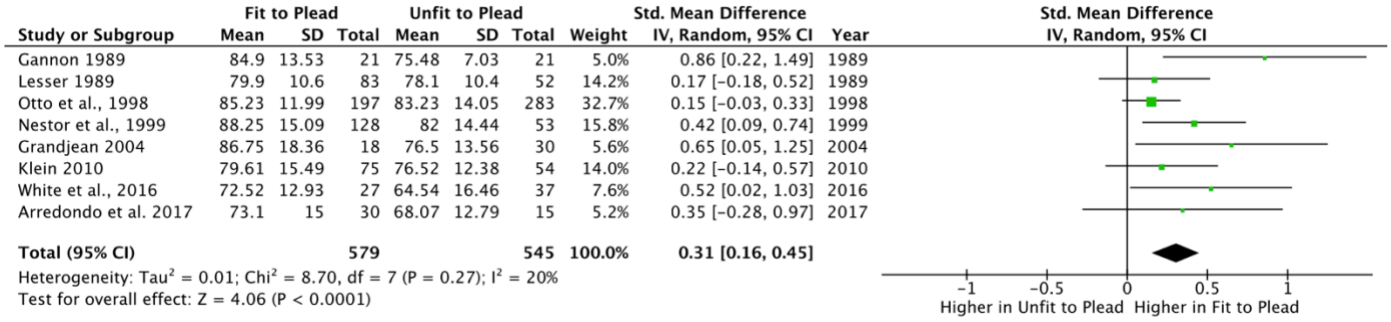

Figure 3: *Random effects meta analysis of SMD between FtP and UtP groups in FSIQ*

Comparisons of Verbal IQ

FtP participants scored significantly higher across studies in Verbal IQ (Figure 4); with both groups scoring within the 'low average' range. Moderate heterogeneity was detected across studies (I^2 = 49%). The overall SMD was d = 0.32 (95% CI 0.12, 0.52; z = 3.16, p = 0.002); a difference of 5 standard scores.

In the Verbal IQ analysis, (Figure 4), the SMDs reported by Grandjean (2004) and Hoge (1996) were identified as outliers as they were substantially higher than the other SMDs reported in this analysis; therefore, a sensitivity analysis was completed. The removal of this study reduced the overall SMD to d=0.23 (95% CI 0.05, 0.40; z = 2.57; p = 0.01); a difference of 3 standard scores, and reduced heterogeneity (I^2 = 25%) with the differences observed between FtP and UtP remaining significant.

A sensitivity analysis to remove unpublished studies resulted in differences between FtP and UtP becoming non-significant. The overall SMD reduced to d=0.30 (95% CI -0.14, 0.73; z = 1.35; p = 0.18); a difference of 5 standard scores, and increased heterogeneity (I^2 = 73 %).

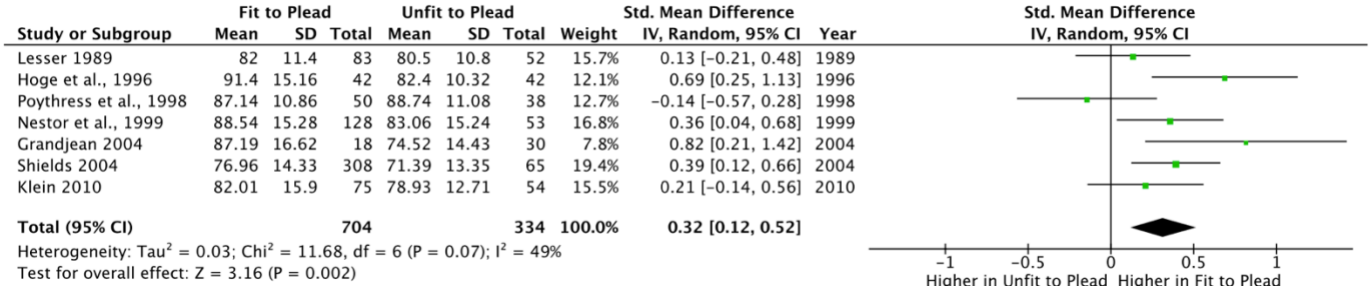

Figure 4: *Random effects meta analysis of SMD between FtP and UtP groups in Verbal IQ*

Comparisons of Performance IQ

Again, FtP participants scored significantly higher across studies in Performance IQ (Figure 5), with FtP scoring in the 'low average' range and UtP participants scoring in the 'borderline' range. Little heterogeneity was detected across studies (I^2 = 0%). The overall SMD was d = 0.35 (95% CI 0.20, 0.50; z = 4.46, p < 0.00001); a difference of 5 standard scores.

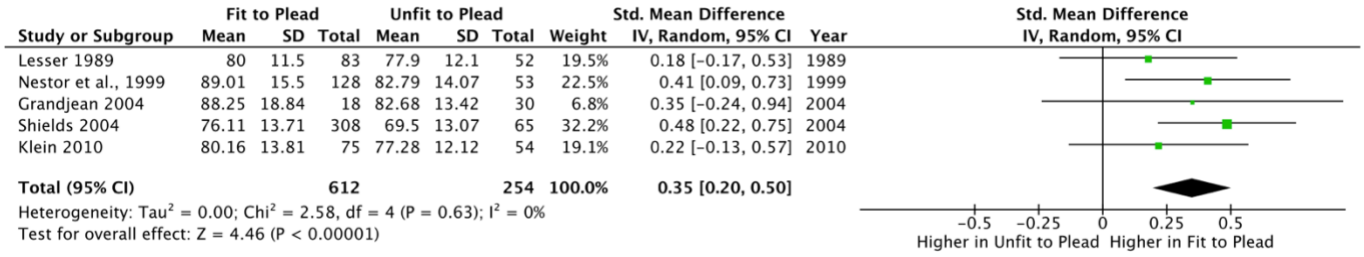

Figure 5: *Random effects meta analysis of SMD between FtP and UtP groups in Performance IQ*

WAIS subtest analysis

Figure 6 illustrates the random-effects meta-analysis of subtest scaled score means and standard deviations. Figure 6 adapted from Kuo and Eack (2020).

Five of the six studies that included subtest scores were unpublished studies. Therefore, sensitivity analyses to remove unpublished data were not carried out in the subtest analyses.

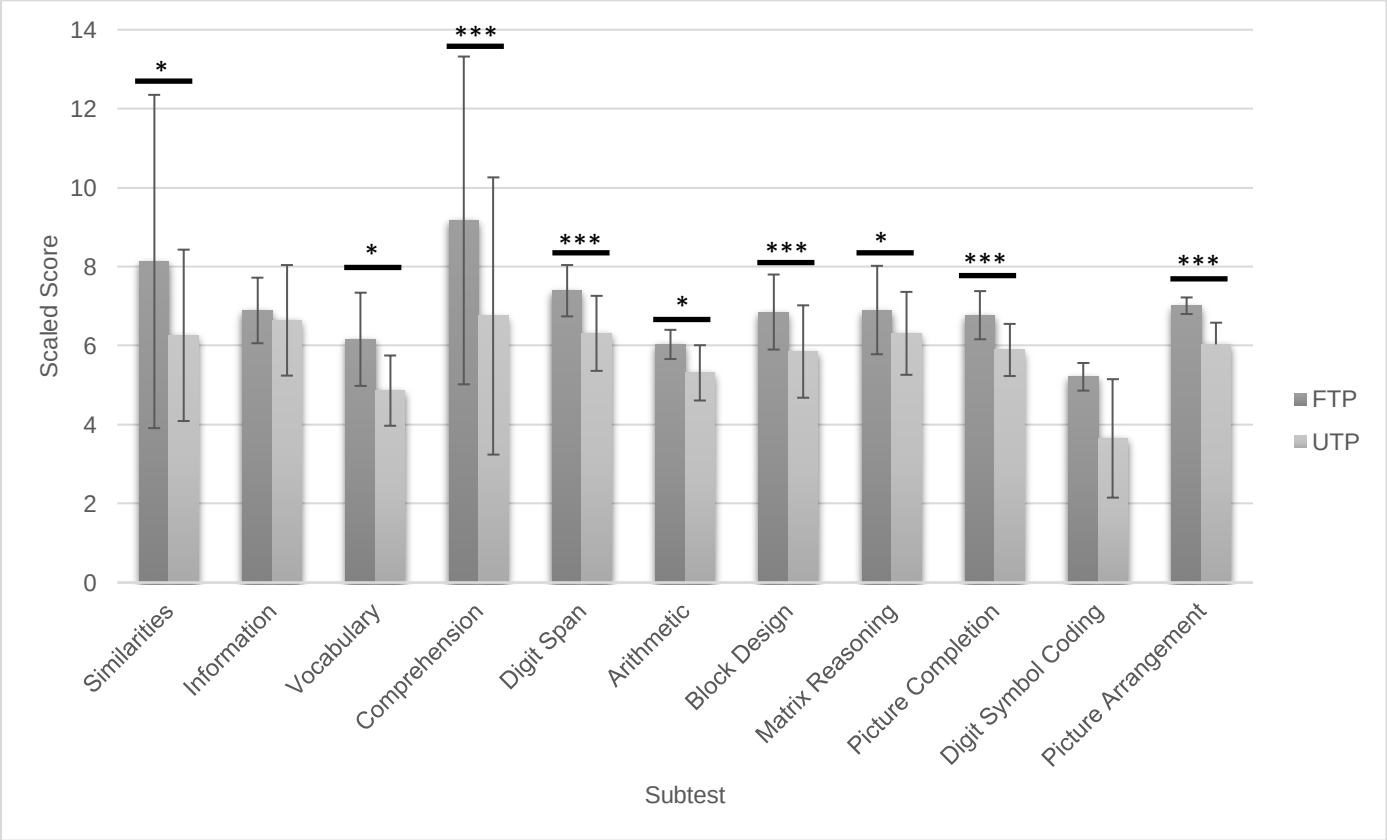

Figure 6. *Performance on the Wechsler Adult Intelligence Scale subtests in FtP and UtP defendants. Random effects meta-analysis of standard mean differences (SMDs) of scaled subtest scores. Graph depicts weighted subtest SMD and standard deviation for each subtest with significance of the effect sizes highlighted (*p<.05, **p<.01, ***p<.001). Thin bars represent confidence intervals for scaled scores.*

Comparisons of Verbal Comprehension Index subtests

Forest plots illustrate performance on subtests in the verbal comprehension index; Vocabulary (Figure 7), Similarities (Figure 8), Comprehension (Figure 9) and Information (Figure 10). Overall, FtP participants scored within the 'average' and 'borderline' range on subtests, whilst UtP participants scored within the 'borderline' and 'extremely low' range. Both groups demonstrated the lowest scores in the Vocabulary subtest. Across all included subtests, FtP participants showed significantly higher scores on three subtests of verbal comprehension: Similarities, Vocabulary and Comprehension subtests.

In the Vocabulary subtest (Figure 7), FtP participants scored in the 'Borderline' range and UtP participants scoring in the 'extremely low' range. Little heterogeneity was detected across studies (I^2 = 0%). The overall SMD was d = 0.24 (95% CI 0.05, 0.43; z = 2.44, p = 0.01); a difference of one scaled score.

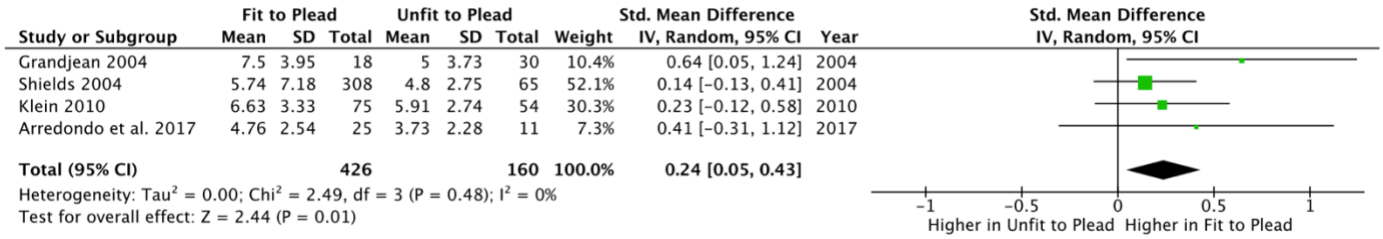

Figure 7*: Random effects meta analysis of SMD between FtP and UtP groups in Vocabulary subtest*

Moderate heterogeneity was detected across studies in the Similarities subtest (I^2 = 58%), however a small effect size was still detected; d = 0.38 (95% CI 0.05, 0.71; z = 2.25, p = 0.02); a difference of one scaled score. FtP participants scored within the 'average' range and UtP participants scored in the 'borderline' range.

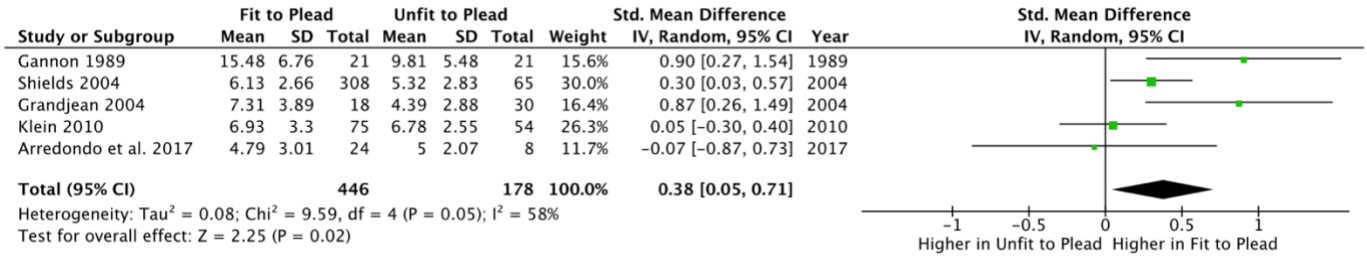

Figure 8: *Random effects meta analysis of SMD between FtP and UtP groups in Similarities subtest*

In the Comprehension subtest (Figure 9), the FtP group scored within the 'average' range, whist the UtP group scored within the 'borderline' range. A moderate effect size was observed suggesting significantly higher scores by FtP participants in this subtest; d = 0.50 (95% CI 0.31, 0.70; z = 5.12; p < 0.00001); a difference of two scaled scores. Heterogeneity across studies was detected as zero (I^2 = 0%), suggesting differences in Comprehension performance across studies is likely to be homogenous.

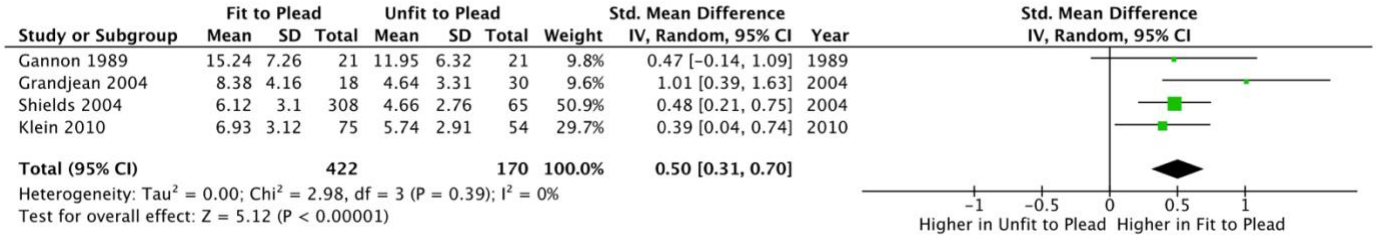

Figure 9: *Random effects meta analysis of SMD between FtP and UtP groups in Comprehension subtest*

Scores in the Information subtest (Figure 10) did not differ significantly between FtP and UtP participants; d = 0.12 (95% CI -0.16, 0.40; z = 0.83, p = 0.40)**;** a difference of half of one scaled score. Both groups scored within the 'borderline' range. These non-significant results may be associated with the levels of heterogeneity detected (I^2 = 40%).

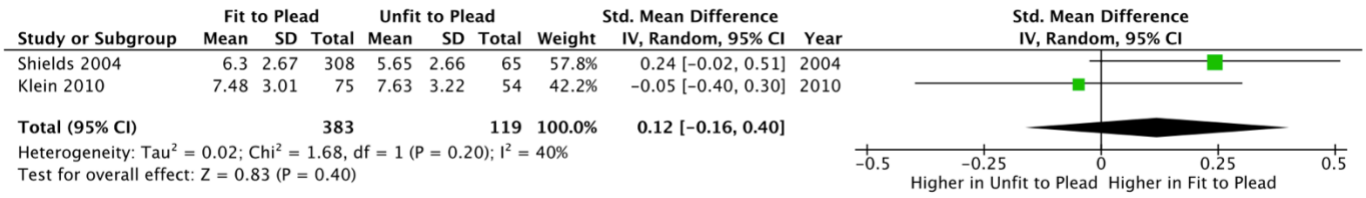

Figure 10*: Random effects meta analysis of SMD between FtP and UtP groups in Information subtest*

Comparisons of Perceptual Organisation Index subtests

Forest plots illustrate performance on subtests in the perceptual organisation index; Block Design (Figure 11), Matrix Reasoning (Figure 12), and Picture Completion (Figure 13).

All participants (both FtP and UtP) scored within the 'borderline' range for all subtests in the perceptual reasoning index. All differences between FtP and UtP participants demonstrated small, significant effect sizes, with differences in performance on Block Design and Picture Completion being determined as highly significant ($p < 0.001$). Very little heterogeneity was detected across these subtest comparisons (I^2 = 0 - 16%) suggesting the differences in performance in the perceptual reasoning subtests are unlikely to be determined by chance.

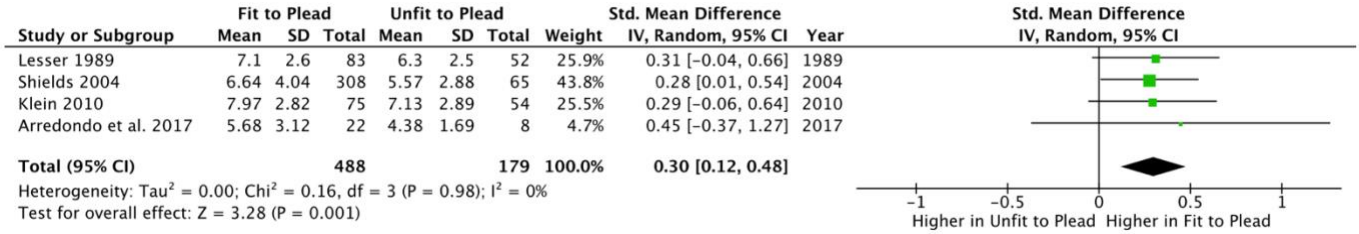

Figure 11*: Random effects meta analysis of SMD between FtP and UtP groups in Block Design subtest*

In the Matrix Reasoning subtest (Figure 12), the SMDs reported by Grandjean (2004) and Shields (2004) were identified as outliers as they were substantially higher than the other SMDs reported in this subtest analysis; therefore, a sensitivity analysis was completed. The removal of these studies reduced the overall SMD to d=0.06 (95% CI -0.26, 0.38; z = 0.36; p = 0.72); a difference of approximately half a scaled score difference and reduced heterogeneity (I^2 = 0%) with the differences observed between FtP and UtP becoming non-significant.

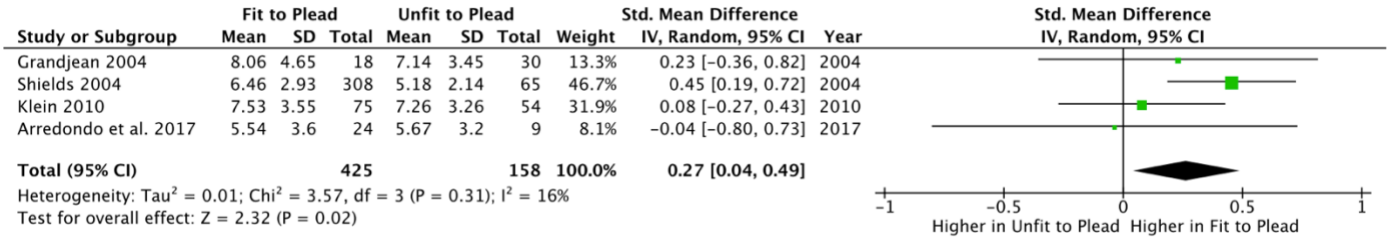

Figure 12*: Random effects meta analysis of SMD between FtP and UtP groups in Matrix Reasoning subtest*

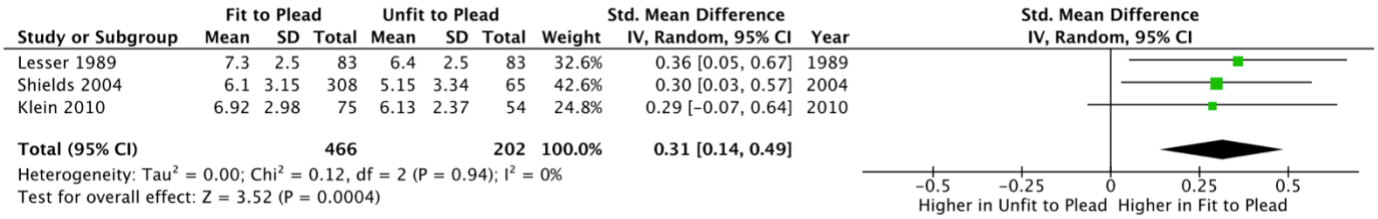

Figure 13*: Random effects meta analysis of SMD between FtP and UtP groups in Picture Completion subtest*

Comparisons of Processing Speed Index subtests

The forest plot below illustrates performance on the subtest in the processing speed index; Digit Symbol Coding (Figure 14).

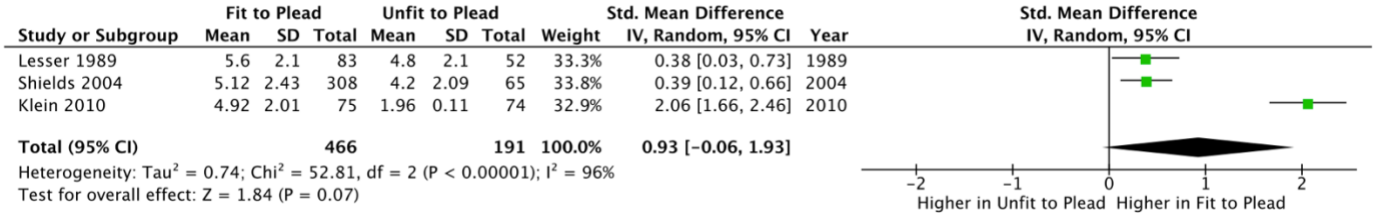

Figure 14: *Random effects meta analysis of SMD between FtP and UtP groups in Digit Symbol Coding subtest*

Three studies compared performance on the Digit Symbol Coding subtest. In these studies, the FtP group scored within the 'borderline' range and the UtP group scored in the 'extremely low' range. The overall SMD was d = 0.95 (95% CI -0.06, 1.93; z = 1.84; p=0.07), a difference of three scaled scores and the difference between the FtP and UtP groups did not reach significance. These non-significant results may be associated with the substantial heterogeneity observed in this subtest (I^2 = 96%). A sensitivity analysis removing Klein (2010), reduced the overall SMD to d=0.38 (95% CI 0.17, 0.60; z = 3.53; p = 0.0004), a difference of one scaled score, and reduced heterogeneity substantially (I^2 = 0%) with the differences observed between FtP and UtP becoming significant.

Comparisons of Working Memory Index subtests

Forest plots illustrate performance on subtests in the working memory index; Digit Span (Figure 15) and Arithmetic (Figure 16).

Participants assessed as being FtP again, showed significantly higher scores on both subtests of Working Memory. In the Digit Span subtest, FtP participants scored within the 'low average' range, whilst the UtP participant scored within the 'borderline' range (scaled score mean for FtP = 7.39 and

6.31 for UtP). For the Arithmetic subtest, both FtP and UtP participants scored in the 'borderline' range. Across both subtests, differences between FtP and UtP demonstrated small, but significant effect sizes indicating better performance in the FtP group; a difference of one scaled score. Digit span subtest demonstrated highly significant differences between FtP and UtP ($p<0.001$). Little heterogeneity was detected across these subtest comparisons ($I^2 = 0\%$).

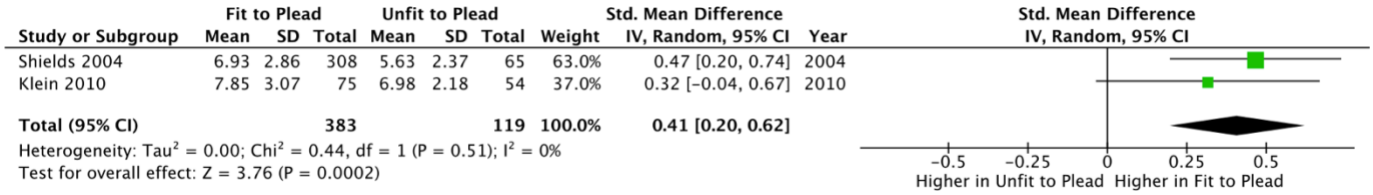

Figure 15: *Random effects meta analysis of SMD between FtP and UtP groups in Digit Span subtest*

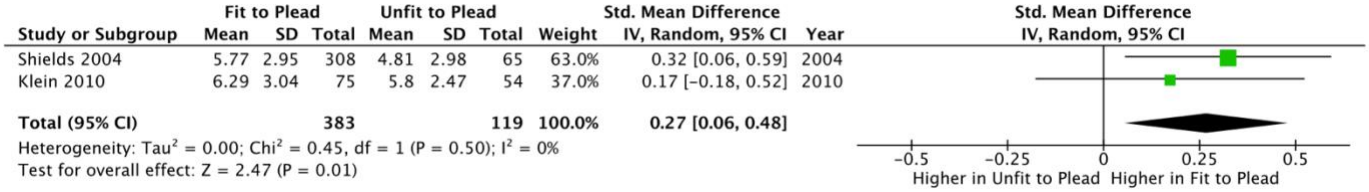

Figure 16: *Random effects meta analysis of SMD between FtP and UtP groups in Arithmetic subtest*

Comparisons of Picture Arrangement subtest

A forest plot illustrates performance on the subtest in Picture Arrangement subtest (Figure 17). Three studies compared performance on this subtest, with FtP participants scoring within the 'low average' range and UtP participants scoring within the 'borderline' range. The overall SMD was d = 0.41 (95% CI 0.21, 0.61; z = 3.96; $p<0.0001$), a difference of one scaled score, and the difference between the FTP and UTP groups reached significance, with little heterogeneity being detected ($I^2 = 0\%$).

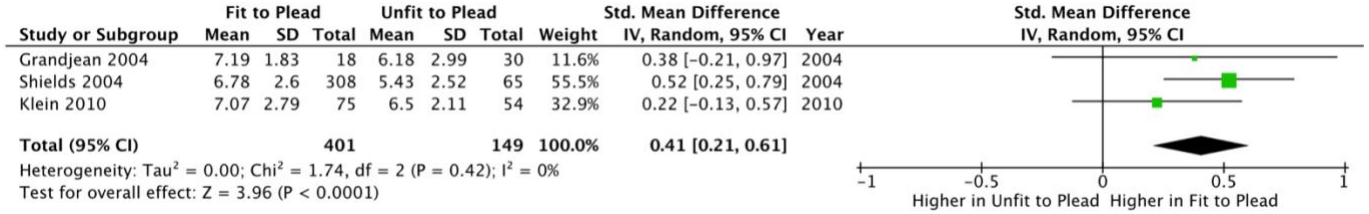

Figure 17: R*andom effects meta analysis of SMD between FtP and UtP groups in Picture Arrangement subtest*

DISCUSSION

This meta-analysis aimed to investigate the differences and commonalities in performance on the WAIS (Wechsler, 2008), between individuals deemed FtP and those deemed UtP. In a sample of 1669 participants, FtP defendants demonstrated significantly superior performance across FSIQ, PIQ and VIQ pre sensitivity analysis. Post-sensitivity analysis, differences remained significant in FSIQ and PIQ, however differences became non-significant in VIQ following removal of unpublished studies. Across domains, FtP defendants demonstrated significantly higher scores on 9 of the 11 subtests included in this meta-analysis, compared to UtP defendants: both pre and post sensitivity analysis.

Despite statistical differences between the groups, effect sizes for FSIQ, VCI and PRI were small (d=0.3; d=0.31; d=0.35 respectively), equating to approximately 5 standard scores. Similar effect sizes were observed at subtest level, equating to approximately 1 scaled score difference between groups. Larger effects were observed in some subtests, such as Comprehension and Picture Arrangement, indicating that the better performance on these subtests may be instructive in the determination of FtP. However, these subtests were included in only four and three studies respectively, limiting the conclusions that can be drawn. While these are consistent with the extant literature, the small effect sizes observed raise questions about the clinical utility of the WAIS in the determination of FtP; given that many clinicians appear to rely on this tool in the determination of FtP. These findings highlight the need for more thorough and ecologically valid assessments of the domains that underpin performance on these tests, in addition to, or instead of, the WAIS. Newer assessments that utilise aspects of neuropsychological tests along with ecologically valid components such as vignettes show promise in this area (Brown et al., 2018)

Most score means for the FtP group fell within the ‘borderline’ classification, with only some falling within the ‘average’ and ‘low average’ classifications. The UtP group also mostly fell within the ‘borderline’ classification with some subtests falling into the ‘extremely low’ classification. These

findings highlight that whilst descriptive classifications serve to aid in communication, they should not be relied on when making clinical determinations. These results emphasise that poor performance on these subtests is not, in and of itself, an indication of UtP.

Subtest breakdown

The most prominent difference between FtP and UtP defendants was detected in the Comprehension subtest within the Verbal Comprehension Index, in which a moderate effect size was observed. This subtest examines a participant's ability to provide solutions to everyday problems and aims to evaluate verbal reasoning and social inference. Notably, in the Picture Arrangement subtest, an effect size of 0.41 was observed, the second largest within this meta-analysis. Interestingly, both Comprehension and Picture Arrangement subtests have been associated with social communication, specifically the ability to interpret others' non-verbal behaviour (Campbell & McCord, 1996); and potentially indicates the importance of these abilities in FtP. The FtP group performed significantly better than UtP on all subtests falling within the perceptual reasoning index. This index is thought to examine visuospatial abilities, reasoning and problem solving, which again, are all likely central to determination of FtP. Interestingly, no significant differences were detected in two subtests: Information and Digit Symbol Coding. However, a sensitivity analysis produced significant findings for the Digit Symbol Coding subtest.

Two sensitivity analyses were performed on subtest analyses that removed outliers. These analyses resulted in an overall reduction of effect size, along with findings in one analysis becoming non-significant. It should also be highlighted that Shields (2004), was commonly identified as an outlier and was rated as having a high risk of bias in multiple domains in the risk of bias assessment due to a number of factors including inadequate coding of moderating variables, absence of data regarding level of education and current psychiatric diagnosis.

Performance Validity Tests

As previously mentioned, it is of crucial importance that tests of performance validity are used in neuropsychological assessments to ensure the accuracy of findings (Wisdom et al., 2014). Green and colleagues (2001) found decreases in effect sizes associated with PVT failure and found performance of those who failed PVTs to be on average 0.57 SDs lower on verbal comprehension compared to those who passed. This study that examined the neuropsychological results of over nine hundred participants, concluded that effort could explain 53% of the variance found in test scores; highlighting again the importance of PVTs in clinical research and practice.

Only two included studies excluded participants on the basis of failure of a PVT, limiting the conclusions that can be drawn regarding the accuracy of the findings of this meta-analysis. The WAIS Digit Span can be used as an embedded test of performance validity, with a scaled score of 5 or less indicating incomplete effort (Webber & Soble, 2018); both FtP and UtP group means were above this score; however it remains possible that some within these groups did score below this threshold. The shortcomings of embedded performance validity measures in comparison to dedicated tests have long been the source of critique (e.g. McGuire et al., 2019), highlighting the limitations of the included data.

Comparison to current literature

This meta-analysis has expanded the current literature on the role of cognition in FtP. The focus on IQ in determining FtP has been further clarified and disassembled. The current review does offer support for previous literature that has highlighted differences in FSIQ between FtP and UtP defendants (e.g. Parker, 2009). However, whilst differences are indicated at a statistical level the mostly small effect sizes observed (translating to approximately five standard scores and one scaled score) are within the 95% confidence interval for FSIQ, VCI and PRI composites, raising significant questions about the clinical utility of the WAIS in the determination of FtP. Indeed, this study has highlighted that the use of the WAIS alone in the determination of FtP may be problematic given the negligible clinical differences in participant groups deemed FtP and UtP. The findings from this study

emphasis the need for the use of additional, more ecologically valid assessments to guide expert witnesses' opinion in the determination of FtP. Furthermore, where an expert witness relies on any neuropsychological tests, specifically in the USA, the courts must take into consideration factors to determine the admissibility of this scientific evidence; known as the Daubert ruling (Rix, 2012). Results from this meta-analysis may draw into question whether the use of the WAIS in isolation, particularly in the absence of PVTs could meet this test in a court of law. The Law Commission (2009) continue to consider if this test would be beneficial in the United Kingdom, making the results of this meta-analysis pertinent to those working in various jurisdictions.

The current analysis has highlighted the nuances in the subtests often used to calculate FSIQ and offered some clarity on subtest performance. Results from this meta-analysis extend previous literature that has highlighted the importance of cognition in the determination of FtP such as attention, working memory and executive functioning (e.g. Bush et al., 2017). More specifically, this meta-analysis has highlighted domains that may be of importance in the determination of FtP, including verbal reasoning, social inference and non-verbal reasoning.

Limitations

The primary limitation of this meta-analysis was the small number of studies included due to the limited research in this specific area. The data set was therefore unsuitable for certain statistical analysis such as publication bias. Fewer than half of the included studies were rated as having a 'low' risk of bias, highlighting the lack of quality in the included studies. Many of the criteria to assess the risk of bias in the included studies by Pirelli et al., (2011), assess design quality, however a number examine report quality. This arguably offers a mixed and balanced assessment of risk of bias, however these criteria have been used only once by White et al (2012) and therefore should be interpreted with caution. All studies included in this meta-analysis were cross-sectional in design; the lowest level of study design (Guyatt et al., 2011). Cross sectional studies are inherently limited

in terms of generalisability and ability to infer a causal relationship, and studies examining FtP are further limited due to the legal constraints and settings in which data can be collected.

Five of the eleven included studies were unpublished: another limitation of this review. However, the inclusion of grey literature in this meta-analysis was seen as important. Meta analyses that exclude papers on the basis of unpublished status were found in some cases to overestimate effect sizes and given that it takes on average three years for results to be published in a peer reviewed journal, it seemed arbitrary to exclude articles on the basis of published status in this small literature (Schmucker et al., 2017). Importantly, all unpublished studies included in this review were doctoral theses, mitigating some of the concern regarding the lack of peer review. Due to the small literature it was considered important to include unpublished work in this analysis and the sensitivity analyses conducted to determine its influence ensured any potential issues were highlighted. The majority of differences between groups remained significant following these sensitivity analyses and all effect sizes remained small. Finally, over half of the included studies were published before the year 2000, highlighting the lack of attention to this area academically.

A significant consequence of the limited attention to this field was that it precluded the opportunity to focus on the most recent version of the WAIS, the WAIS-IV, instead necessitating the inclusion of multiple versions of the WAIS. Whilst some differences exist across WAIS versions including subtest content and administration guidance, previous studies have highlighted that different versions of the WAIS can be reliably compared with each other (Tulsky et al., 2000), encouraging users to take into account confidence intervals as is the case in the present study. Importantly, FtP continues to be the most common referral to forensic mental health professionals internationally (Neal & Grisso, 2014), with the WAIS being the most common tool used to assess individuals (Blake & Ogloff, 2020), highlighting the clinical relevance of these findings.

A further limitation of this review is variability in the determination of group membership (i.e., FtP or UtP). Five studies used structured assessment tools to determine FtP and details on determination of FtP varied in other papers which often provided little detail on how defendants were categorised into groups (whether this was determined by clinical evaluation for example). In some studies, group membership had already been determined prior to administration of the WAIS; data was collected retrospectively in four of the included studies (Klein, 2010; Nestor et al., 1999; Shields, 2004; White et al., 2016) and collected prospectively in six studies (Arredondo et al., 2017; Gannon, 1989; Hoge et al., 1996; Lesser, 1989; Otto et al., 1998; Poythress et al., 1998). It was unclear from the information provided how data was collected in the study by Grandjean (2006). Only two included studies compared 'unquestionably fit' participants randomly selected in a prison setting to those deemed UtP in a secure forensic unit (Otto et al., 1998; Poythress et al., 1998). All other participants had been referred for an assessment to determine the individual's FtP, inferring this was in question for these participants; therefore, this sample is unlikely to be representative of the entire forensic population, however, does offer some explanation to why the samples were so similar.

Every psychometric instrument is influenced by error. One source of error that is arguably more likely to influence performance in forensic populations include cooperation of the participant and variability in examiner behaviour (Habets et al., 2015). Furthermore, forensic mental health assessment, like all assessment, is subject to examiner bias (Zapf et al., 2017). One study found that examiner's evaluations and determination differed significantly based on whether the examiner had been directed by defence or prosecution (Murrie et al., 2013). The structured and objective nature of neuropsychological tools may help mitigate the impact of this bias; however, further research is required to examine this phenomenon.

The results of this meta-analysis may not be representative of the wider UtP population due to relatively small sample sizes and limited representation of younger and female defendants. Indeed,

unsurprisingly, all but one of the study populations originated in the United States of America (USA); which utilises the legal criteria of Dusky vs. United States (1960). The proportion of defendants found UtP differs across jurisdictions. Approximately 60,000 defendants per year are referred for assessment of FtP in the USA (Poythress et al., 2002), with around one fifth of these being found UtP (Fitch, 2007). In contrast, in the United Kingdom (UK), findings of UtP continue to be extremely rare, with an estimated 98 findings of UtP per year by the Crown Court (The Law Commission, 2016). As noted, findings of UtP have widely varied potential implications for defendants, such as differential treatment of individuals, including avoidance of certain legal outcomes such as execution in certain states of the USA. These implications may offer some explanation as to differences in prevalence of findings between the USA and UK. These findings suggest that the threshold for UtP may be significantly higher in other jurisdictions (Mackay et al., 2007). Interestingly, one study in the UK that examined only FSIQ in an inpatient forensic hospital, found the mean FSIQ of these inpatients to be 71.49 (SD=13.88) (Flinn et al., 2018); in contrast to the overall mean FSIQ of the participants in the current study was 77.89 (SD=5.41). Whilst detail on the determination of FtP/UtP was not available for the UK patient sample, this finding emphasises that results from this meta-analysis may not be consistent across legal jurisdictions and should be interpreted with caution. Finally, although data extraction was carried out twice, there is always a level of subjectivity in the review process. The risk of bias assessment was also completed by two independent reviewers, but again, a level of subjectivity remains in this process.

A confounding factor in forensic populations that receives little attention in the literature is the trauma and stress associated with incarceration. Biles (1968) examined this and found significantly lower IQ scores upon arrival in prison compared to measurement at a later time point during imprisonment. Little literature exists in the examination of this phenomenon, which may be in part due to practice effects, and other studies have found little change in IQ scores during long term imprisonment (Goethals, 1981; Dettbarn, 2012). This literature is limited by small samples and poor

methodological quality such as the non-blinding of examiners; however, it highlights the complexities of obtaining accurate and valid psychometric test results in forensic settings and the need for detail of the timings of assessment to be highlighted in study reports. This issue is particularly pertinent in this population given that assessments of FtP are likely to be conducted during times of increased trauma and stress.

Future Research

As highlighted above, more research is required in other jurisdictions to examine thresholds internationally, however the possibility remains that some non-English papers have been published and have been excluded in this review. Studies have highlighted the widespread clinical use of the WAIS globally, therefore, additional data could add much needed depth to the data presented in this meta-analysis. This meta-analysis provides preliminary data to inform the development of best practice guidance around the use of the WAIS in the determination of FtP, however more research is required, particularly in legal jurisdictions other than the US, to aid guidance in this area. Of priority should be the use of other ecologically valid assessments of FtP, the investigation of other cognitive domains and instruments being used in conjunction with effort tests to ensure valid results.

Whilst standard intelligence tests clearly provide a useful tool in the determination of FtP, these tests fail to capture other cognitive impairments associated with neurological conditions known to be of high prevalence within the forensic population, such as traumatic brain injury (TBI) (e.g. Moynan & McMillan, 2018). The WAIS continues to be used widely in clinical practice in the determination of FtP, however this battery is a measure of general cognitive abilities rather than more specific cognitive domains associated with FtP, highlighting the shortcomings of reliance on this instrument as a decision-making tool in FtP determinations. Aspects of executive functioning, such as social knowledge and abstract thought are arguably critical to determining an individual's ability to participate fully in legal proceedings (Brown, 2019) and are not captured in measures of intellect (Ardila et al., 2000). Few expert witnesses appear to extend their assessments to measure of other

abilities, that may significantly impact a defendant's ability to participate fully in proceedings (Neal & Grisso, 2014). Therefore, future work is needed to determine the relationship between other cognitive domains and FtP. Those conducting these assessments routinely should continue to consider the utility of a wider range of standardised assessment tools to assist thorough and accurate assessment of defendants.

Conclusion

In conclusion, defendants found FtP generally demonstrated significantly superior performance in both WAIS indexes and subtests, compared to defendants found UtP, with the largest effects being noted in the Comprehension subtest. The current meta-analysis highlights the shortcomings of the use of the WAIS when applied as a diagnostic tool to this population, given the negligible differences between groups when translated into standard and scaled scores. Furthermore, it adds to the growing body of evidence, that suggests the detailed assessment and accurate reporting of cognitive domains, in addition to the WAIS, may play a central role in differentiating FtP and UtP defendants, particularly verbal comprehension and perceptual reasoning.

This meta-analysis highlights that thorough assessment of vulnerable defendants' cognitive abilities, including PVTs, should be conducted by forensic mental health professionals as part of a wider assessment of FtP that also includes ecologically valid assessments and other clinical data. The current study is limited, particularly by the small number of papers included and their methodological quality, limiting the generalisability of the findings and highlighting the need for caution in interpretation of findings. Further research is required, particularly in other jurisdictions, to supplement and clarify the findings in this meta-analysis.

REFERENCES

Alexander Rothschild, M., Erdmann, E., & Parzeller, M. (2007). *Der Patient vor Gericht: Verhandlungs- und Vernehmungsfähigkeit*.

Anderson, S. D., & Hewitt, J. (2002). The effect of competency restoration training on defendants with mental retardation found not competent to proceed. *Law and Human Behavior*, *26*(3), 343–351.

Archer, R. P., Buffington-Vollum, J. K., Stredny, R. V., & Handel, R. W. (2006). A Survey of Psychological Test Use Patterns Among Forensic Psychologists. *Journal of Personality Assessment*, *87*(1), 84–94. https://doi.org/10.1207/s15327752jpa8701_07

Ardila, A., Pineda, D., & Rosselli, M. (2000). Correlation Between Intelligence Test Scores and Executive Function Measures. *Archives of Clinical Neuropsychology*, *15*(1), 31–36. https://doi.org/10.1093/arclin/15.1.31

Arredondo B.C., Marcopulos B.A., Brand J.G., Campbell K.T., & Kent J.-A. (2017). Cognitive functioning and adjudicative competence: Defendants referred for neuropsychological evaluation in a psychiatric inpatient setting. *The Clinical Neuropsychologist*, *31*(8), 1432–1448. https://doi.org/10.1080/13854046.2017.1317032

Biles, D. (1968). Test performance and imprisonment. *Australian & New Zealand Journal of Criminology*, *1*(1), 46–58. https://doi.org/10.1177/000486586800100106

Blake, G. A., & Ogloff, J. R. P. (2020). The correlates of unfitness to stand trial in victoria, australia. *The International Journal of Forensic Mental Health*, *Addington, J., Heinssen, R. K., Robinson, D. G., Schooler, N. R., Marcy, P., Brunette, M. F., Correll, C. U., Estroff, S., Mueser, K. T., Penn, D., Robinson, J. A., Rosenheck, R. A., Azrin, S. T., Goldstein, A. B., Severe, J., Kane, J. M. (2015). Duration of untreated psychosis in community treatment settings in the United States . Psychiatric Services (Washington, D.C.), 66, 7, 753-756. http://dx.doi.org/10.1176/appi.ps.201400124*, No-Specified. https://doi.org/10.1080/14999013.2020.1812013

Brewster, E., Willox, E. G., & Haut, F. (2008). Assessing fitness to plead in Scotland's learning disabled. *Journal of Forensic Psychiatry & Psychology*, *19*(4), 597–602. https://doi.org/10.1080/14789940801912507

Brown, P. (2019). Modernising Fitness to Plead. *Medicine, Science, and the Law*, *59*, 131–134. https://doi.org/10.1177/0025802419863937

Brown, P., Stahl, D., Appiah-Kusi, E., Brewer, R., Watts, M., Peay, J., & Blackwood, N. (2018). Fitness to plead: Development and validation of a standardised assessment instrument. *PLoS ONE*, *13*(Civil Rights&Civil Law [4210]).

Bush, S. S. [Ed], Demakis, G. J. [Ed], & Rohling, M. L. [Ed]. (2017). APA handbook of forensic neuropsychology. *APA Handbook of Forensic Neuropsychology.*, *American Psychological Association, Commission for the Recognition of Specialties and Proficiencies in Professional Psychology. (2010a). Clinical neuropsychology. Retrieved from http://www.apa.org/ed/graduate/specialize/neuro.aspx*. https://doi.org/10.1037/0000032-000

Cabeldue M., Green D., McGrath R.E., & Belfi B. (2020). Factors Related to Repeat Forensic Hospital Admissions for Restoration of Competency to Stand Trial. *Journal of Forensic Psychology Research and Practice*, *(Cabeldue) Department of Psychiatry and Behavioral Sciences, Tulane University School of Medicine, New Orleans, United States*. https://doi.org/10.1080/24732850.2020.1834834

Campbell, J. M., & McCord, D. M. (1996). The WAIS-R Comprehension and Picture Arrangement Subtests as Measures of Social Intelligence: Testing Traditional Interpretations. *Journal of Psychoeducational Assessment*, *14*(3), 240–249. https://doi.org/10.1177/073428299601400305

Climie, E. A., & Rostad, K. (2011). Test Review: Wechsler Adult Intelligence Scale. *Journal of Psychoeducational Assessment*, *29*(6), 581–586. https://doi.org/10.1177/0734282911408707

Cohen, J. (2013). *Statistical Power Analysis for the Behavioral Sciences*. Routledge. https://doi.org/10.4324/9780203771587

Day A., White J., Howells K., Whitford H., O'Brien K., & Chartres D. (2000). The uses of court-ordered psychiatric and psychological reports in South Australian magistrates' courts. *Psychiatry Psychology and Law*, *7*(2), 254–263.

DerSimonian, R., & Laird, N. (1986). Meta-analysis in clinical trials. *Controlled Clinical Trials*, *7*(3), 177–188. https://doi.org/10.1016/0197-2456(86)90046-2

Dettbarn, E. (2012). Effects of long-term incarceration: A statistical comparison of two expert assessments of two experts at the beginning and the end of incarceration. *International Journal of Law and Psychiatry*, *35*(3), 236–239. https://doi.org/10.1016/j.ijlp.2012.02.014

Drogin, E. Y. (2007). Postconviction Assessment. *Forensic Psychology: Emerging Topics and Expanding Roles.*, *Ackerson, K. S., Brodsky, S. L., Zapf, P. A. (2005). Judges' and psychologists' assessments of legal and clinical factors in competence for execution. Psychology, Public Policy, and Law, 11, 164-193. http://dx.doi.org/10.1037/1076-8971.11.1.164*, 385–417.

Everington, C. T. (1990). The Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR): A validation study. *Criminal Justice and Behavior*, *17*(Criminal Law&Adjudication [4230]), 147–168. https://doi.org/10.1177/0093854890017002001

Fabian, J. M., Thompson, W. W., & Lazarus, J. B. (2011). Life, Death, and IQ: It's Much More than Just a Score: Understanding and Utilizing Forensic Psychological and Neuropsychological Evaluations in Atkins Intellectual Disability/Mental Retardation Cases. *CLEVELAND STATE LAW REVIEW*, *59*, 33.

Fitch, W. L. (2007). AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial: An American legal perspective. *Journal of the American Academy of Psychiatry and the Law*, *35*(4), 509–513.

Flinn, L. C., Hassett, C. L., & Braham, L. (2018). Development of forensic normative data for the WAIS-IV. *Journal of Forensic Practice*, *20*(1), 58–67.

Gannon, J. L. (1989). Validation of the Competency Assessment Instrument and elements of competency to stand trial. *Dissertation Abstracts International*, *50*(Criminal Rehabilitation&Penology [3386]), 3675.

Goethals, J. (1981). Imprisonment and cognitive impairment. *Journal of Clinical Psychology*, *37*(2), 418–422. https://doi.org/10.1002/1097-4679(198104)37:2<418::AID-JCLP2270370238>3.0.CO;2-8

Gouvier, W. D., Lees-Haley, P. R., & Hammer, J. H. (2003). The Neuropsychological Examination in the Detection of Malingering in the Forensic Arena: Costs and Benefits. In *Clinical Neuropsychology and Cost Outcome Research*. Psychology Press.

Gowensmith, W. N. (2019). Resolution or resignation: The role of forensic mental health professionals amidst the competency services crisis. *Psychology, Public Policy, and Law*, *25*(1), 1–14. https://doi.org/10.1037/law0000190

Grandjean, N. R. (2006). Neuropsychological predictors of incompetency to stand trial in defendants referred for competency restoration. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *66*(Cognitive Processes [2340]), 3947.

Great Britain, Law Commission, Bean, D. M., & Stationery Office (Great Britain). (2016). *Unfitness to plead. Volume 1, Volume 1,*.

Green, D., Rosenfeld, B., Belfi, B., Rohlehr, L., & Pierson, A. (2012). Use of Measures of Cognitive Effort and Feigned Psychiatric Symptoms with Pretrial Forensic Psychiatric Patients. *International Journal of Forensic Mental Health*, *11*(3), 181–190. https://doi.org/10.1080/14999013.2012.723665

Green, P. (2007). The Pervasive Influence of Effort on Neuropsychological Tests. *Physical Medicine and Rehabilitation Clinics of North America*, *18*, 43–68, vi. https://doi.org/10.1016/j.pmr.2006.11.002

Green, P., Rohling, M. L., Lees-Haley, P. R., & Allen, L. M. (2001). Effort has a greater effect on test scores than severe brain injury in compensation claimants. *Brain Injury*, *15*(12), 1045–1060. https://doi.org/10.1080/02699050110088254

Guyatt, G., Oxman, A. D., Akl, E. A., Kunz, R., Vist, G., Brozek, J., Norris, S., Falck-Ytter, Y., Glasziou, P., deBeer, H., Jaeschke, R., Rind, D., Meerpohl, J., Dahm, P., & Schünemann, H. J. (2011). GRADE guidelines: 1. Introduction—GRADE evidence profiles and summary of findings tables. *Journal of Clinical Epidemiology*, *64*(4), 383–394. https://doi.org/10.1016/j.jclinepi.2010.04.026

Habets, P., Jeandarme, I., Uzieblo, K., Oei, K., & Bogaerts, S. (2015). Intelligence is in the Eye of the Beholder: Investigating Repeated IQ Measurements in Forensic Psychiatry. *Journal of Applied Research in Intellectual Disabilities*, *28*(3), 182–192. https://doi.org/10.1111/jar.12120

Heller, M. S., Traylor, W. H., Ehrlich, S. M., & Lester, D. (1981). Intelligence, psychosis, and competency to stand trial. *Bulletin of the American Academy of Psychiatry & the Law*, *9*(4), 267–274.

Higgins, J. P. T., Thomas, J., Chandler, J., Cumpston, M., Li, T., Page, M., & Welch, V. (2019). *Cochrane Handbook for Systematic Reviews of Interventions: Vol. 2nd Edition* (Version 6.1). John Wiley & Sons.

Higgins, J. P. T., & Thompson, S. G. (2002). Quantifying heterogeneity in a meta-analysis. *Statistics in Medicine*, *21*(11), 1539–1558. https://doi.org/10.1002/sim.1186

Higgins, J. P. T., & Thompson, S. G. (2004). Controlling the risk of spurious findings from meta-regression. *Statistics in Medicine*, *23*(11), 1663–1682. https://doi.org/10.1002/sim.1752

Hoge, S. K., Poythress, N., Bonnie, R., Eisenberg, M., Monahan, J., Feucht-Haviar, T., & Oberlander, L. (1996). Mentally ill and non-mentally ill defendants' abilities to understand information relevant to adjudication: A preliminary study. *Bulletin of the American Academy of Psychiatry & the Law*, *24*(2), 187–197.

Kaufman, A. S., & Lichtenberger, E. O. (2005). *Assessing Adolescent and Adult Intelligence*. John Wiley & Sons.

Klein, K. L. (2010). Neuropsychological and personality predictors of competence to stand trial: A social cognitive perspective. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *72*(2-B), 1167.

Kreslins, A., Robertson, A., & Melville, C. (2015). The effectiveness of psychosocial interventions for anxiety in children and adolescents with autism spectrum disorder: A systematic review and meta-analysis. *Child and Adolescent Psychiatry and Mental Health*, *9*, 22. https://doi.org/10.1186/s13034-015-0054-7

Kuo, S. S., & Eack, S. M. (2020). Meta-Analysis of Cognitive Performance in Neurodevelopmental Disorders during Adulthood: Comparisons between Autism Spectrum Disorder and Schizophrenia on the Wechsler Adult Intelligence Scales. *Frontiers in Psychiatry*, *11*. https://doi.org/10.3389/fpsyt.2020.00187

Lally, S. J. (2003). What tests are acceptable for use in forensic evaluations? A survey of experts. *Professional Psychology: Research and Practice*, *34*(Forensic Psychology&Legal Issues [4200]), 491–498. https://doi.org/10.1037/0735-7028.34.5.491

Lees-Haley, P. R., Smith, H. H., Williams, C. W., & Dunn, J. T. (1996). Forensic neuropsychological test usage: An empirical survey. *Archives of Clinical Neuropsychology*, *11*(1), 45–51. https://doi.org/10.1016/0887-6177(95)00011-9

Lesser, F. I. (1989). Formulating a prediction model for regaining competency to stand trial. *Dissertation Abstracts International*, *51*(2-B), 993.

Macaskill, P., Walter, S. D., & Irwig, L. (2001). A comparison of methods to detect publication bias in meta-analysis. *Statistics in Medicine*, *20*(4), 641–654. https://doi.org/10.1002/sim.698

Mackay, R., Mitchell, B. J., & Howe, L. (2007). A continued upturn in unfitness to plead—More disability in relation to the trial under the 1991 Act. *Criminal Law Review*, 530–545.

Marsh, I. C. (2019). *Understanding the impact of psychosocial risk factors on the maternal-fetal/infant relationship in the perinatal period*. https://era.ed.ac.uk/handle/1842/36665

McDermott, P. A., Fantuzzo, J. W., & Glutting, J. J. (1990). Just Say No to Subtest Analysis: A Critique on Wechsler Theory and Practice. *Journal of Psychoeducational Assessment*, *8*(3), 290–302. https://doi.org/10.1177/073428299000800307

McGuire, C., Crawford, S., & Evans, J. J. (2019). Effort Testing in Dementia Assessment: A Systematic Review. *Archives of Clinical Neuropsychology*, *34*(1), 114–131. https://doi.org/10.1093/arclin/acy012

Melton, G. B., Petrila, J., Poythress, N. G., Slobogin, C., Lyons, P. M. Jr. [Col], & Otto, R. K. [Col]. (2007). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers. *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers.*, *20 C.F.R. 404.1501 et seq. (1985) (Regulations Governing Consent to Research).*

Mossman, D. (2007). Predicting restorability of incompetent criminal defendants. *Journal of the American Academy of Psychiatry and the Law*, *35*(1), 34–43.

Moynan, C. R., & McMillan, T. M. (2018). Prevalence of head injury and associated disability in prison populations: A systematic review. *Journal of Head Trauma Rehabilitation*, *33*(4), 275–282. https://doi.org/10.1097/HTR.0000000000000354

Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are Forensic Experts Biased by the Side That Retained Them? *Psychological Science*, *24*(10), 1889–1897. https://doi.org/10.1177/0956797613481812

Murrie, D. C., Gardner, B. O., & Torres, A. N. (2020). Competency to stand trial evaluations: A state-wide review of court-ordered reports. *Behavioral Sciences & the Law*, No-Specified. https://doi.org/10.1002/bsl.2436

Murrie, D. C., & Zelle, H. (2015). Criminal competencies. *APA Handbook of Forensic Psychology, Vol. 1: Individual and Situational Influences in Criminal and Civil Contexts.*, *Psychological&Physical Disorders [3200]*, 115–157. https://doi.org/10.1037/14461-005

Neal, T., & Grisso, T. (2014). Assessment Practices and Expert Judgment Methods in Forensic Psychology and Psychiatry: An International Snapshot. *Criminal Justice and Behavior*, *41*, 1406–1421. https://doi.org/10.1177/00093854814548449

Nestor, P. G., Daggett, D., Haycock, J., & Price, M. (1999). Competence to stand trial: A neuropsychological inquiry. *Law and Human Behavior*, *23*(4), 397–412.

Nussbaum D., Mamak M., Tremblay H., Wright P., & Callaghan J. (1998). The metfors fitness questionnaire (MFQ): A self-report measure for screening competency to stand trial. *American Journal of Forensic Psychology*, *16*(3), 41–65.

Otto, R. K., Poythress, N. G., Nicholson, R. A., Edens, J. F., Monahan, J., Bonnie, R. J., Hoge, S. K., & Eisenberg, M. (1998). Psychometric properties of the MacArthur Competence Assessment Tool-Criminal Adjudication. *Psychological Assessment*, *10*(Criminal Law&Adjudication [4230]), 435–443. https://doi.org/10.1037/1040-3590.10.4.435

Parker, B. C. (2009). Competence to stand trial: Analysis of cognitive capacities as measured by the Wechsler Abbreviated Scale of Intelligence, the Wechsler Adult Intelligence Scale-III, and the role of gender and diagnosis. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *69*(10-B), 6429.

Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., Shamseer, L., Tetzlaff, J. M., Akl, E. A., Brennan, S. E., Chou, R., Glanville, J., Grimshaw, J. M., Hróbjartsson, A., Lalu, M. M., Li, T., Loder, E. W., Mayo-Wilson, E., McDonald, S., … Moher, D. (2021). The PRISMA 2020 statement: An updated guideline for reporting systematic reviews. *BMJ*, *372*, n71. https://doi.org/10.1136/bmj.n71

Peay, J. (2012). *Fitness to Plead and Core Competencies: Problems and Possibilities* (SSRN Scholarly Paper ID 1991265). Social Science Research Network. https://doi.org/10.2139/ssrn.1991265

Pirelli, G. (2011). A meta-analytic review of competency to stand trial research. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *71*(12-B), 7734.

Poythress, N. G., Bonnie, R. J., Monahan, J., Otto, R., & Hoge, S. K. (2002). Adjudicative competence: The MacArthur studies. *Adjudicative Competence: The MacArthur Studies.*, *Adams v. United States ex rel. McCann, 317 U.S. 269, 275 (1942).* https://doi.org/10.1007/978-1-4419-8493-7

Poythress, N. G., Hoge, S. K., Bonnie, R. J., Monahan, J., Eisenberg, M., & Feucht-Haviar, T. (1998). The competence-related abilities of women criminal defendants. *Journal of the American Academy of Psychiatry and the Law*, *26*(Clinical Psychological Testing [2224]), 215–222.

Rix, K. J. B. (2012). Expert evidence on trial: Commentary on… Psychiatric Aspects of Fraud Offending. *Advances in Psychiatric Treatment*, *18*(3), 193–197. https://doi.org/10.1192/apt.bp.111.009175

Rogers, R., Tillbrook, C., & Sewell, K. (2004). *Evaluation of Competency to Stand Trial-Revised (ECST-R) and professional manual. Odessa, FL: Psychological Assessment Resources*.

Ryba, N. L., & Zapf, P. A. (2011). The influence of psychiatric symptoms and cognitive abilities on competence-related abilities. *The International Journal of Forensic Mental Health*, *10*(1), 29–40. https://doi.org/10.1080/14999013.2010.550982

Saklofske, D. H., Chelune, G. J., Heaton, R. K., Ivnik, R. J., Bornstein, R., Prifitera, A., & Ledbetter, M. F. (2003). *Clinical Interpretation of the WAIS-III and WMS-III*. Academic Press.

Schmucker, C. M., Blümle, A., Schell, L. K., Schwarzer, G., Oeller, P., Cabrera, L., Elm, E. von, Briel, M., Meerpohl, J. J., & Consortium, on behalf of the O. (2017). Systematic review

finds that study data not published in full text articles have unclear impact on meta-analyses results in medical research. *PLOS ONE*, *12*(4), e0176210. https://doi.org/10.1371/journal.pone.0176210

Shields, C. L. (2004). Competence to stand trial: Cognitive-related abilities and other factors. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *66*(2-B), 1186.

Siegert M. & Weiss K.J. (2007). Who is an expert? Competency evaluations in mental retardation and borderline intelligence. *Journal of the American Academy of Psychiatry and the Law*, *35*(3), 346–349.

Simon, M. J. (1987). Use of the Proverbs Test in the assessment of competency to stand trial. *Psychological Reports*, *60*(Criminal Law&Adjudication [4230]), 1166. https://doi.org/10.2466/pr0.1987.60.3c.1166

Tomlin, J., Lega, I., Braun, P., Kennedy, H. G., Herrando, V. T., Barroso, R., Castelletti, L., Mirabella, F., Scarpa, F., Völlm, B., Pham, T., Müller-Isberner, R., Taube, M., Rivellini, G., Calevro, V., Liardo, R., Pennino, M., Markiewicz, I., Barbosa, F., … the experts of COST Action IS1302. (2020). Forensic mental health in Europe: Some key figures. *Social Psychiatry and Psychiatric Epidemiology*. https://doi.org/10.1007/s00127-020-01909-6

Tulsky, D. S., Zhu, J., & Prifitera, A. (2000). Chapter 5—Assessment of Adult Intelligence with the WAIS-III. In G. Goldstein & M. Hersen (Eds.), *Handbook of Psychological Assessment (Third Edition)* (pp. 97–129). Pergamon. https://doi.org/10.1016/B978-008043645-6/50083-5

van der Wijngaart, S., Hawkins, R., & Golus, P. (2015). The role of psychologists in the South Australian fitness to stand trial process. *Psychiatry, Psychology and Law*, *22*(1), 75–93. https://doi.org/10.1080/13218719.2014.919626

Vanderploeg, R. D. (2014). *Clinician's Guide To Neuropsychological Assessment*. Psychology Press.

Viljoen, J. L., & Zapf, P. A. (2002). Fitness to stand trial evaluations: A comparison of referred and non-referred defendants. *The International Journal of Forensic Mental Health*, *1*(2), 127–138. https://doi.org/10.1080/14999013.2002.10471168

Webber, T. A., & Soble, J. R. (2018). Utility of various WAIS-IV Digit Span indices for identifying noncredible performance validity among cognitively impaired and unimpaired examinees. *The Clinical Neuropsychologist*, *32*(4), 657–670. https://doi.org/10.1080/13854046.2017.1415374

Wechsler, D. (1939). *The measurement of adult intelligence* (pp. ix, 226). Williams & Wilkins Co. https://doi.org/10.1037/10020-000

Wechsler, D. (2008). *WAIS-IV: Wechsler adult intelligence scale*. Pearson.

Wechsler, D., 1896-1981. (1981). *WAIS-R : Wechsler adult intelligence scale-revised*. https://search.library.wisc.edu/catalog/999605091402121

Wechsler, D. & Psychological Corporation. (1997). *WAIS-III: Administration and scoring manual : Wechsler Adult Intelligence Scale*. Psychological Corporation.

White, A. J., Batchelor, J., Meares, S., Pulman, S., & Howard, D. (2016). Fitness to stand trial in one Australian jurisdiction: The role of cognitive abilities, neurological dysfunction and psychiatric disorders. *Psychiatry, Psychology and Law*, *23*(Criminal Law&Adjudication [4230]), 499–511. https://doi.org/10.1080/13218719.2015.1080152

White, A. J., Batchelor, J., Pulman, S., & Howard, D. (2012). The role of cognitive assessment in determining fitness to stand trial. *The International Journal of Forensic Mental Health*, *11*(Clinical Psychological Testing [2224]), 102–109. https://doi.org/10.1080/14999013.2012.688091

White, A. J., Meares, S., & Batchelor, J. (2014). The role of cognition in fitness to stand trial: A systematic review. *Journal of Forensic Psychiatry & Psychology*, *25*(1), 77–99. https://doi.org/10.1080/14789949.2013.868916

White A.J., Meares S., & Batchelor J. (2014). The role of cognition in fitness to stand trial: A systematic review. *Journal of Forensic Psychiatry and Psychology*, *25*(1), 77–99. https://doi.org/10.1080/14789949.2013.868916

Wisdom, N. M., Pastorek, N. J., Miller, B. I., Booth, J. E., Romesser, J. M., Linck, J. F., & Sim, A. H. (2014). PTSD and cognitive functioning: Importance of including performance validity testing. *The Clinical Neuropsychologist*, *28*(1), 128–145. https://doi.org/10.1080/13854046.2013.863977

Zapf, P., Kukucka, J., Kassin, S., & Dror, I. (2017). Cognitive Bias in Forensic Mental Health Assessment: Evaluator Beliefs About Its Nature and Scope. *Psychology, Public Policy, and Law*. https://doi.org/10.1037/law0000153

Journal Article 2: Empirical Paper[1]

"It's a matter of experience": Navigating the system of fitness to plead as a legal professional in the United Kingdom

Susan Harris [ab], Dr Andrew Wood [b], Dr Suzanne O'Rourke [a]

[a] School of Health in Social Sciences, University of Edinburgh, UK

[b] Clinical Health and Neuropsychology Service, NHS Lanarkshire, UK

Corresponding author: Susan Harris, NHS Lanarkshire, UK, email: susan.harris@lanarkshire.scot.nhs.uk

[1] Written in accordance with submission guidelines for Psychology, Public Policy and Law (Appendix 1 for author guidelines)

ABSTRACT

Findings of unfitness to plead continue to be extremely rare within the criminal justice system in the United Kingdom. Legal professionals not only bear the significant responsibility of initially identifying potentially vulnerable individuals; they are also tasked with choosing the correct expert to assess the individual, communicating with the expert witness, providing instruction to the expert and interpreting the report produced. Much commentary and literature exists regarding the quality and content of such reports yet there remains limited understanding of legal professionals' experience of this process. The present study aimed to expand this literature and 'give voice' to the experience of legal professionals working with fitness to plead cases throughout their careers. A sample of 10 legal professionals with extensive experience of FtP within the legal system of the United Kingdom participated in semi-structured interviews. Participants were asked about their experience of identifying vulnerable individuals, their experience of working with expert witnesses and their opinion on the current system. Reflexive thematic analysis (RTA) of the data generated three main themes: *catching cases, finding ways to work together* and *not quite there yet*, which taken together describe the challenges, frustrations and opportunities participants faced when navigating this complex system. Further light was shed on the complex role legal professionals must navigate when working with vulnerable individuals within the criminal justice system and the central role of career experience in guiding their decision making and actions. Implications of these findings are discussed.

Keywords: Fitness to Plead; Legal Professionals; Expert Witness; Interviews; Qualitative Analysis

Word Count: 7789

Conflicts of interest: None

Disclosure Statement: This research did not receive any grants from public, commercial, or not-for profit sector funding agencies.

INTRODUCTION

The adoption of the European Convention of Human Rights into domestic law within the United Kingdom (UK) has engendered significant progress regarding how vulnerable individuals are managed within the criminal justice system (Exworthy & Brown, 2017). Article 6 (1) of the convention highlights that individuals accused of a crime are entitled to not only a fair trial before an impartial tribunal but must also be able to participate effectively throughout this process (Galappathie & Shaw, 2020). In other words, an individual must be 'fit to plead' (FtP) before proceeding to trial. Jurisdictions across the UK differ slightly, however the legal test of whether a person may be FtP in a court of law largely focuses upon a small number of key questions (Brown, 2019). These questions relate to whether an individual is able to understand: the nature of the charge against them; the purpose of a trial; the need to enter a plea and the consequences of such a plea; in addition to possessing an able to instruct a legal representative and to follow the course of a trial (Drogin et al., 2011).

The implications of being found unfit to plead (UtP) are significant for both defendants and victims and determine whether defendants continue to be processed via the criminal justice system or are diverted to the National Health Service (Akinkunmi, 2006). For the defendant, being deemed UtP leads to the cessation of normal trial procedures and effectively withdraws the defendant from inclusion in the proceedings, and with it their opportunity to influence outcomes and the degree of their perceived culpability (Galappathie & Shaw, 2020). A finding that an individual is unfit to plead is typically accompanied by a recommendation of disposal through the mental health system where outcomes can include detention in hospital without limit of time, or a community order that may restrict their independence (Exworthy, 2006). Inaccurate conclusions around an individual's fitness to plead (FtP) can deny an individual who may be FtP the right to a fair trial but, arguably more commonly, can force a defendant who is unable to participate fully to undergo a trial unjustly (Murrie et al., 2020).

Concerns around an individual's ability to engage fully in the necessary competencies that determine FtP require potential difficulties to be identified by the legal professional involved (e.g., solicitor, junior or senior counsel, judge). Initial concerns can theoretically be put forward by the presiding judge, the prosecutor or the individual's own defence solicitor or advocate. However, in actuality, the judge or prosecutor are likely to first meet with the accused individual in the court room, where an individual may engage only to confirm their name and address; as such, an individual's own solicitor or advocate possess the best opportunity- along with the greatest responsibility- for detecting potential issues. Legal professionals not only bear the significant responsibility of initially identifying potentially vulnerable individuals; they are also tasked with finding and choosing the correct expert witness to assess the individual, communicating with expert witnesses, providing instruction to the expert, and interpreting the report produced.

An *expert witness* may be a clinical or other practitioner psychologist or psychiatrist who can provide expert evidence in such cases, that can include clinical observation and neuropsychological assessment of the individual (Wolf & Guyer, 2009). Whilst the ultimate determination of FtP is legal, it is highly influenced by the expert witness (e.g. Acklin et al., 2015) highlighting the responsibility faced by expert witnesses (Murrie & Zelle, 2015). Expert witnesses can offer opinions on FtP and where appropriate, offer recommendations on how to facilitate a full trial with trial adjustments (BPS, 2021). In the absence of best practice guidelines, the quality of such reports has been questioned (Laxton, 2019; Robinson & Acklin, 2010). In one study conducted into the implementation of FtP legislation in Scotland, 139 pre-trial reports on learning disabled defendants were examined, of which only 40% had correctly applied the legal test of FtP (Brewster, Willox & Haut , 2008). Research has highlighted that few expert witness assessments examine abilities that are essential to an individual fully participating in proceedings such as the ability to inhibit both verbal responses and impulsiveness more generally, as well as their ability to remember, manipulate and consider information relevant to the consequences of their actions or decisions during their trial (Laxton,

2019). Commentary and quantitative literature have primarily focused on the quality and contents of assessments by expert witnesses (e.g. Murrie et al., 2020), yet little is known about the experience of legal professionals who are closely involved in this process.

Findings of unfitness to plead (UtP) are extremely rare within the UK (Mackay et al., 2007), calling into question the extent to which the current system of UtP is currently utilised within the UK. The most recent and accurate statistics (prior to the disruption of the system due to the Covid-19 pandemic) available from the Ministry of Justice (2019) estimated findings of UtP to account for less than 1% of those passing through the criminal justice system in the UK. Given an estimated 1.4 million individuals pass through the criminal justice system per year in England and Wales alone, the Law Commission (2010) estimated that around 100 findings of UtP occur per year. Furthermore, the most recent annual report produced by the Scottish Government (*Criminal Proceedings in Scotland,* 2019-20) detailed that 85,726 individuals were subject to criminal proceedings. No records available publicly outline figures around cases of UtP in Scotland, however the most recent report produced by the Mental Welfare Commission (2018-19) outlined that 39 individuals were made the subject of a compulsion order within this time period (i.e. less than 1% of those detained). This figure represents both those who may have been UtP and also those who were deemed not criminally responsible for the criminal act by reason of mental disorder; highlighting that findings of UtP may be even lower than this figure.

These figures are of particular concern given the high prevalence of significant mental health and cognitive difficulties reported within the forensic population (Fazel & Baillargeon, 2011; McMillan et al., 2021); difficulties that may have a wide ranging and significant impact on an individual's FtP. Prevalence ratios of severe mental health difficulties, such as psychotic illnesses have been estimated to be sixteen times higher in forensic populations in comparison to the general population (Baranyi et al., 2019). A psychiatric diagnosis of a psychotic illness has been determined as one of

the most common characteristics of those found UtP (Cabeldue et al., 2020; Heller et al., 1981; Viljoen & Zapf, 2002). Whilst psychotic illnesses exist as the most obvious of mental disorders to potentially influence one's FtP, many other impairments may significantly impinge on one's ability to engage in the competencies required to participate effectively in criminal proceedings. These can include, but are not limited to, impairments as a result of intellectual disability, developmental disorder or delay, communication impairments, traumatic brain injury, or a combination of the above (Bush et al., 2017). Meta analyses have estimated rates of intellectual disability in forensic populations to be between 1% up to 69.9% (Muñoz García-Largo et al., 2020) compared to the rates of around 2% in the general population (Olusanya et al., 2020). These elevated prevalence rates of mental health and cognitive difficulties highlight the size of the issue at hand and illustrate that the figures available of those deemed UtP are likely a vast underestimation of those who may meet threshold for UtP within the criminal justice system in the UK. The wide ranging, varying and often under diagnosed impairments discussed require initial identification by the individual's legal professional in order to be formally assessed in relation to FtP (Cox, 2012).

The dearth of research exploring the experiences of legal professionals is troublesome given the pivotal role legal professionals play in how a vulnerable individual will experience the criminal justice system. Understanding why so few findings of UtP occur within the UK must be explored further with those that play such a central role in identifying individuals who may present with difficulties. In one qualitative study examining criminal barristers views of the legislation around FtP, Rogers and colleagues (2009) found participants had concerns about vulnerable defendants being unable to fully participate in court proceedings and expressions of unease that the current threshold for UtP was too high. Since this study, a report produced by the Law Commission (2016) concluded that reform of the current system was necessary. Issues highlighted in this report included the lack of screening procedures for UtP and the erroneous, continued focus on psychiatric disorder being the most significant contribution to UtP, rather than other cognitive impairment. Furthermore,

investigations of FtP involve the interface between legal and healthcare professionals (Peay, 2012), raising the challenge of intersecting skills, competencies and values. Legal professionals have significant skill, expertise, and training in defending and prosecuting individuals, whilst expert witnesses possess knowledge and skill in the assessment and treatment of mental health and cognitive difficulties. The interface and relationship between law and medicine has a long and complex history (Swanepoel, 2009). The 'justice silo effect' has been a term coined to describe the challenges, and fragmented manner in which communication, sharing of knowledge and information can take place between disciplines and organisations such as forensic health care professionals and legal professionals (Ross, 2012). Some research has suggested this 'silo effect' may not be as pronounced as once thought, however research remains limited in this area (Kelty et al., 2013). No literature, to our knowledge has explored legal professional's experience of the interface, specifically in relation to FtP.

Against the backdrop laid out above, this study aimed to give voice to and explore the experiences of those intimately involved in the identification vulnerable individuals within the criminal justice system. Given the exploratory nature of this study, a qualitative methodology was employed to understand legal professionals' experience of FtP. This included but was not limited to, their experience of: the identification of vulnerable individuals, the referral process, the commissioning of reports, the reports themselves and the agreement/disagreement between themselves, expert witnesses, and the court. Legal professionals play a central role in the FtP system within the UK and this study aimed to understand their experience of navigating this system.

METHOD

Design and Participants

Semi structured individual interviews were utilised to speak to a range of legal professionals about their career experience of FtP. Ethical approval was granted by the University of Edinburgh School of Health in Social Science Ethics Committee (See Appendix 2 and 3 for protocol and approval).

This study was not preregistered. The participant population was conceptualised around the following parameters: a legal professional (e.g., solicitor, barrister, judge) who is, or has worked in the UK, professional experience of the assessment of FtP in criminal cases and ability to speak and read English. Initial recruitment took place by convenience sampling, followed by snowballing (Braun & Clarke, 2013); potential participants were identified through contacts of the lead researcher, who, in turn, approached known legal professionals who appeared to be eligible. The Participant Information Sheet (PIS; Appendix 4) was distributed to potential participants which included details on eligibility. Potential participants were contacted by the lead researcher to ensure eligibility and provided with additional information on the study, and a consent form (Appendix 5), accessed via a link to Qualtrics through email. Following consideration of this material and completion of the consent form, a mutually convenient time was agreed for the interview to be undertaken.

Fifteen professionals expressed an interest in participating, with five declining to proceed at the point of receiving the PIS. Various issues were cited as reasons to withdraw from the study including time pressures, requirement of formal agreement from workplaces or perceived lack of experience in the area; 10 participants agreed to participate. Three participants were recruited directly through the lead researcher, and all remaining participants were recruited through snowball sampling. A total of ten participants were recruited and this number was deemed to provide sufficient 'information power' (Malterud et al., 2016). This concept moves away from the frequently used, yet poorly understood concept of 'data saturation', first coined in grounded theory yet used widely in qualitative research, including thematic analysis (Braun & Clarke, 2021). 'Information power' recognises several domains, such as the aim of the study, sample specificity and quality of dialogue, that can inform sample size within qualitative research, several of which are particularly pertinent to the current study. In the present study, the narrow aim, the highly specific and specialised sample, and high quality of dialogue elicited in the interviews resulted in the present sample being deemed sufficient to provide 'information power'. Whilst the concept of 'information power' is not without its

shortcomings, it was selected as a suitable guide to provide a framework for the number of participants recruited to this study (Braun and Clarke, 2021).

Participant demographics are detailed in Table 1. To protect the anonymity of the professionals involved due to the particularly specialised area of work, gender and location of work were detached from the information below. Recruitment was open to legal professionals across the United Kingdom (UK), however the majority (n=8) of participants were recruited from Scotland. Four female legal professionals were recruited, and the rest were male. Some participants chose not to disclose specific demographic information citing issues of confidentiality.

TABLE 1. Summary of participant demographic information

Participant Code	Current/most recent position	Years held, *n*	Previous relevant positions	Approx. FtP cases, *n*
P1	Advocate	9	Solicitor	25
P2	Queen's Counsel	*DND*	*DND*	6
P3	Principal Solicitor	2	Mental Health Advocate	15
P4	Principal Solicitor	16	Duty Solicitor	6
P5	Judge	23	Defence Agent	6
P6	Queen's Counsel	14	*DND*	8
P7	Queen's Counsel	7	Barrister	15
P8	Associate Solicitor	15	Solicitor	2
P9	Solicitor (Partner)	14	Social Care Job	5
P10	Queen's Counsel	*DND*	Advocate	10

DND = Did not disclose

Procedure

All participants were interviewed individually by the first author. Prior to the initiation of the interview, the lead researcher checked that consent had been obtained on Qualtrics and the content of the PIS and consent form was reiterated to participants. Demographic information (Appendix 6) was collected at this point. Participants were made aware that the interviewer was a trainee clinical

psychologist and encouraged to ask any questions prior to the interview. If interviewees enquired about the researcher's interest in the topic, she disclosed her history of working in forensic mental health; less than half of participants enquired prior to the interview and the majority asked after interview completion. A semi-structured design was used to allow for a fluid method of data collection and more flexibility when responding to in-depth accounts of career experience, generating rich and detailed qualitative data (Willig, 2013).

The interview schedule began with the question "Please give me an overview of your professional experience of fitness to plead within the criminal justice system". Subsequent questions covered various topics around their experience of FtP (e.g. "Tell me about your experience of identifying individuals who may be unfit to plead?"; "What, in your opinion, are some of the strengths and weaknesses of the current process of identifying people who may require an assessment of FtP?"). Many gave accounts of their experience with clients they had worked with throughout their career and additional questions focused on their experience with these clients. See Table 1 for questions used in interviews; For interview schedule see Appendix 7.

Question number	Interview Questions
1	What is your experience of identification of defendants that may be unfit to plead?
2	What, if any, are the barriers to identification and assessment of vulnerable defendants?
3	What are some factors that influence the decision to seek an assessment by an expert witness?
4	What, in your opinion, are the strengths and weaknesses of the current process of identifying those who require an assessment?
5	What is your experience of courts willingness to accept the opinion offered? (Experiences of agreement and disagreement between courts and expert witnesses)

Table 1: *Main questions used to guide semi structured interviews*

Due to restrictions on social contact during the data collection period (April 2021 – June 2021), due to the Covid-19 pandemic, all interviews were conducted remotely. Participants were offered to complete the recorded interview on video calling technology or telephone; eight interviews were completed on video and two on telephone, dependant on participant preference. Interviews lasted between 27 minutes 13 seconds and 77 minutes 16 seconds (M = 45 minutes 13 seconds). Participants were offered an opportunity to provide additional information they felt was relevant and prompted to ask any questions at the end of the interview. Audio/video recordings were transcribed orthographically seven days after interviews were completed, to allow participants to withdraw from the study up to this point, although none did so. Data was anonymised before analysis began, by removing any potentially identifiable material, such as names and locations.

ANALYSIS

Data was analysed using a reflexive thematic analysis (RTA) approach (Braun & Clarke, 2006, 2019). RTA was favoured over other qualitative approaches due to the primary analytic focus in this study being thematic patterning, rather than idiographic meaning (e.g., Interpretive Phenomenological Analysis). RTA was chosen as the method as it is characterised by its foregrounding in researcher subjectivity (Braun and Clarke, 2021); allowing the authors to reflect on their experience of working in this field, their views of FtP and understand the impact this had on the research process. RTA was carried out following the steps described by Braun and Clarke (2006). All interviews were transcribed verbatim by the lead researcher. Transcripts were initially read by the lead researcher, then re-read to aid familiarisation. Distinctive features were then coded and following this, codes were grouped into potential themes (Example of coding and theme development; Appendix 8). Themes were reviewed and revised, supported using NVivo, and eventually named. An iterative process of theme development was then employed until the final themes and subthemes were developed.

The analysis was conducted from an essentialist, realist framework that assumed that participants' experiences, reality and meanings are articulated through language and as such, focuses on explicit meaning in the data (Braun & Clarke, 2006). Codes and themes were therefore identified at the sematic level, meaning coding and theme development reflected the explicit content of the data (Braun & Clarke, 2019). Analysis was conducted inductively, otherwise known as a 'bottom up' or data driven approach. This approach seeks for the analysis to be grounded in the data rather than deductive approaches that analyse data based on prior theories and assumptions. Inductive analysis aided emersion in the data and was helpful in the development of codes and themes. Whilst an inductive approach was employed, it is important to note that analysis of data always takes place in the context of a researchers' prior professional and personal experience, and knowledge. Data collection and analysis were primarily performed by the lead researcher, however frequent supervision between the lead researcher and third author was used to review and reflect on the codes and themes generated and to aid researcher reflexivity. The analysis resulted in the generation of three overarching themes.

Reflexive statement

Reflexivity is fundamental to the appropriate use of any qualitative method. In the present study, the researchers were required to reflect on their personal views, values, and context and how this influenced their engagement with the data. The first author was a female doctoral trainee with previous experience of working in forensic mental health and prison settings, however had no experience of carrying out assessments of FtP. All authors held the belief that vulnerable defendants can go unrecognised within the criminal justice system. The first author engaged in several processes to ensure the rigour and quality of the analysis; keeping a self-reflective journal (Morrow, 2005) throughout the project aided reflection on personal responses to the process, preconceptions about the issues highlighted throughout the process and the impact of personal and professional experience on their interaction with the data.

RESULTS

The three themes generated were*: catching cases, finding ways to work together* and *not quite there yet*, along with 6 subthemes (Figure 1). Taken together, these themes highlight not only the challenges and uncertainty participants faced in identifying potentially vulnerable individuals, but also the opportunities and barriers they faced when interacting across professional boundaries with expert witnesses, the accused themselves and other legal professionals involved in criminal proceedings. Extracts from interview transcripts have been used to demonstrate the interpretative adequacy of the analysis completed and importantly, to give a voice to the interviewees (Braun & Clarke, 2013). Any words or phrases added to clarify an extract are highlighted in square parentheses.

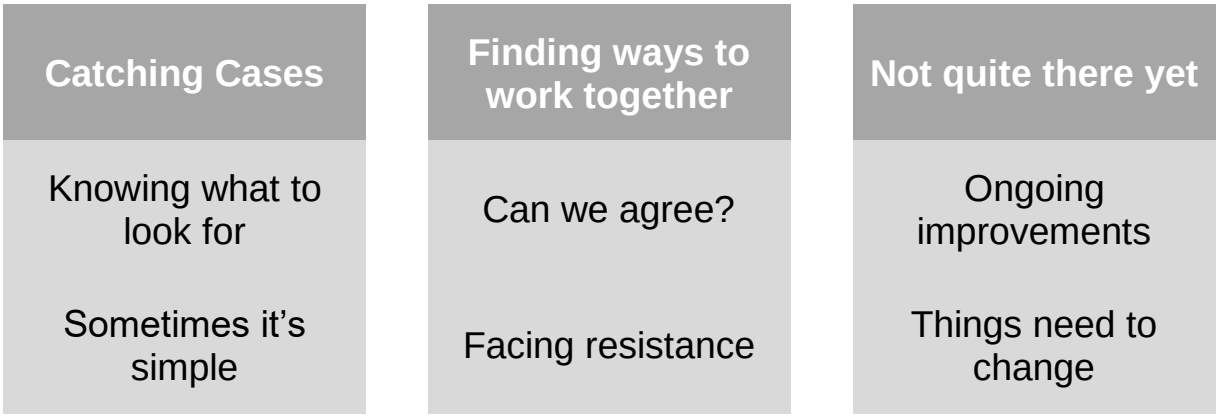

Figure 1: *Thematic structure of main themes and subthemes*

Catching cases

This theme describes the responsibility expressed by participants to identify individuals who may be UtP and importantly, the recognition and acknowledgement that not all cases can be identified or 'caught'. The signs participants look for when first interviewing individuals were discussed, with some feeling confident in their ability to recognise potential issues, however the many challenges associated with identifying such issues were also discussed. This theme also considers the landscape and demographics of those in contact with the criminal justice system and considers that while an individual may present with significant vulnerabilities, the issues do not always reach threshold for the legal test for UtP, something which can impact those working in this field.

Knowing what to look for

Participants reflected on their experience of working with numerous cases throughout their career and it was felt that this experience was what they relied upon most when making decisions around FtP. It appeared that they felt this experience was invaluable in helping them to know what signs to look for, rather than any formal training:

"I suppose it's really from experience doing cases for twenty nearly well what nearly thirty years, coming up on now…I suppose you have spoken to that many defendants in those circumstances…your antenna are tuned in to potential issues you know?" (P7)

Participants expressed uncertainty around naming or pinpointing exactly what potential difficulty was present for an individual, with many opting for engaging an expert witness if any doubts were present. It appeared that getting an assessment if any doubts were present was felt to be the best course of action:

"Sometimes I've been right sometimes and sometimes I've been wrong, but I've always been right for exploring it" (P6)

The many years of career experience appeared to give rise to participants describing an innate sense of knowing that an individual was potentially UtP. When describing this innate sense, many asserted a strong sense of confidence in its presence:

"Just… the attitude. You just got a feeling…(pause)… when people appeared, that all wasn't well. And sometimes it was difficult to put your finger on…you just got a gut feeling about things sometimes" (P5)

Sometimes it's simple

Participants described the obvious and typical signs they looked for when identifying individuals who were potentially UtP. The predominant focus was on significant mental health difficulties, where the difficulties of an individual may be "*very obvious" (P1):*

"… from how they look and how they are talking and what they're talking about, then you start to get a better picture as well and if at that point they are making any admissions… or they're talking a load of gobbilty gook quite frankly..." (P4)

Many narratives were around the challenges associated with working with potentially vulnerable individuals within the criminal justice system. Participants reflected that the difficulties individuals may have were challenging to identify and the uncertainty they felt when trying to ascertain an individual's difficulties:

"a person with mental health problems you know they might be very guarded when you first meet them… it can be really tricky to assess what part of that presentation is their illness and what part of that presentation is their personality if that person is new to you" (P3)

Participants described the more subtle signs they looked for when meeting with potentially vulnerable individuals. Interestingly, participants appeared to struggle to pinpoint what it was exactly that made them seek out an expert witness assessment, however narratives appeared to be focused around communication, particularly apparent abnormalities in how an individual might communicate:

"I mean nine times out of 10 you just get an impression of a person from speaking to them you know how it can be..." (P3)

Many reflected the need to always be alert to changes in an individual's presentation, with many noting the challenges and barriers associated with uncovering issues in individuals presenting in complex ways:

"…if they're not open and honest and upfront about it then you've just got to sometimes be brutally frank in questioning them and then if you don't get a straight answer then you've got to be more nuanced about it…" (P4)

Many described the skills they had developed throughout their career enabling them to not only ask the correct questions but to interpret responses and behaviour to identify vulnerable individuals. Participants spoke of the skills they used to uncover issues, particularly with individuals who may be unable to, or chose not to, disclose information openly. The interpretation of an individuals' communication, behaviour and presentation appeared to require careful integration of multiple sources of information:

"…you pick it [an individual's difficulties] up through consulting, you pick it up through looking at their medical records, and their school records... you pick it up through talking to members of their family, but you also pick it up when the person is sitting opposite to you." (P6)

Finding ways to work together

This theme considers the very nature of investigating FtP, in which legal professionals are required to work effectively together with not only other legal professionals, potentially with differing views and skill sets, but particularly health care professionals. Narratives around this 'cross boundary' working involved a range of participant experiences from clashing opinions and frustration to constructive working relationships. Many participants reflected on the difficulties and responsibility they have faced being in frequent contact with all stakeholders.

Can we agree?

Participants reflected on their experience of agreeing with, disagreeing with, and questioning the opinion provided by expert witnesses. Interactions with expert witnesses appeared to have the potential to result in clear and constructive communication. Many participants described building strong and trusting relationships with expert witnesses that could result in positive interactions which enabled smooth and constructive communication and agreement across the board:

"I've got particular psychologists and psychiatrists that I use that I really think they're great and feel that I've got a good network of professionals that will do assessments for me… I always specifically request assessments from people that I know have got a really good understanding of the legislation and my role and also the system" (P3)

In contrast, 'cross boundary' working with professionals who potentially shared opposing views, skills or understandings could result in problematic interactions and, frequently, disagreement. Reports, opinions, recommendations, and adjustments provided by expert witnesses were viewed as '*very variable'* (P9) by participants, ranging from "*really wonderful"* (P1) to "*a car crash" (*P8):

"My biggest gripe [with reports] is that they don't answer the question I'm asking…my pet peeve is when they just volunteer a free risk assessment on top of it…So I just like it if they answer the question they're asked. (P1)

Participants voiced experiences of other professionals, particularly expert witnesses, lacking understanding of their role, skills and competencies as legal professionals. These experiences frequently involved expert witnesses lacking understanding of legislation around FtP and as such, was deemed frustrating, often resulting in disagreement:

"I think some professionals take a view of fitness to plead that's lacking in nuance… I don't think experts necessarily take enough account of the sophisticated decision making that's required to give instructions and follow a trial and give evidence if you want to." (P10)

Facing resistance

Many narratives highlighted the resistance participants faced at several points throughout the process when working with other professionals. Participants highlighted the concerns and apprehension participants had experienced in response to the opinion offered by an expert witness. Several participants reflected on experiences in which they had referred an individual for assessment by an expert witness and been surprised by the response. This gave rise to participants expressing feelings of powerless in the face of resistance:

"…it can be at times frustrating for us I think when we have quite significant concerns about clients (pause)… I think experience tends to teach you over time that at times we're just left to manage that ourselves. I think that maybe there's an issue about agencies coming at it from different perspectives" (P9)

Many participants reflected how their years of experience moved them from a place of apprehension when faced with resistance from other professionals to a place of confidence and certainty in knowing when and how to challenge an opinion offered:

"I think if you have confidence in your own ability and you're willing to say no actually I'm not happy about this then I think the sheriffs will have to not do anything else(sic)...I mean there can be conflict with the doctors sometimes because they'll say things like 'well it's my patient and I know them best' and I'll say 'it's my client and I know them best'…" (P3)

Not quite there yet

This theme recognises the dual nature of being ‘not quite there yet’; an acknowledgement by participants that systems around FtP have improved, yet a recognition that there remains considerable room for further improvement. Participants described how understanding, practical issues and legislation around FtP have improved over many years, yet stagnated within the criminal justice system. Many participants reflected on the many changes they have observed throughout the course of their own careers in the wider system, the practice of others and indeed their own practice. However, this theme also highlights participants’ assertion that the system is ‘not quite there yet’, with many giving their own perspective on how this could be practically improved in years to come.

Ongoing improvements

Participants who had worked in criminal law for many years identified the generally positive improvements in several aspects including the legislation, police involvement and how other professionals viewed issues of FtP. Some recognised positive improvements in how FtP is identified and managed within the criminal justice system:

“…due to the very nature of the issue and the developments that there have been over the years it's something that people are much more tuned into nowadays than they were 20 years ago” (P5)

Participants recognised the ongoing improvements in others’ practice but particularly their own practice. The influence of years of experience working as a legal professional appeared to result in a changing view of FtP in their working lives along with increased confidence in various matters, including challenging the opinions of others:

“I think [my practice] has changed with experience because experience gives you confidence so now when I'm addressing the court about these things I have confidence in my own authority to make those decisions whereas before…I would have thought well if that's what the experts say

that must be right but I think now … if I'm not confident or comfortable then the obligation and responsibility is with me to make sure that person gets the best representation possible' (P3)

Things need to change

Narratives around recognition that the system has improved were balanced with narratives that the system around FtP had not yet improved sufficiently, accompanied with assertions that change was needed for continued progress in this system. The changes participants identified that could and should take place involved several aspects of the current system and participants highlighted the impact these shortcomings could have. Most appeared to view the current legislation around FtP as overly complex resulting in confusion from other legal professionals and expert witnesses:

"I mean it's [the legislation] is supposed to be streamlined and eloquent and it's just a big horrible ugly house with seven thousand extensions on it right now. And the mental stuff is clearly part of one of those massive extensions. And maybe they should just tear it all down and build a house that's a little bit easier to walk through" (P1)

Many participants suggested various practical improvements that could advance the system including, joint training of expert witnesses and legal professionals, standardised assessments for all individuals to pick up vulnerabilities at an early stage and more resources allocated to vulnerable accused. However, the most common narrative among participants was the lack of training they received and indeed, the need for training among all professionals involved including expert witnesses and all legal professionals:

"There's no training. You know we're not trained about picking up people who are unfit to plead...our training was on the hoof, you know that's why you're a junior for so many years, you work with senior and you pick up the tricks of the trade…." (P6)

It was apparent that how FtP was viewed, not only by other legal professionals, but by expert witnesses and indeed society, was considered to be problematic and resulted in what were appraised as clear missed opportunities to identify potential cases. Some held the belief that this negative appraisal by others had resulted in the system stagnating and participants reflected on the impact these negative appraisals within the system had:

"…the threshold for unfitness is very high…. I don't think that's [changes to the system] going to happen…because if you look at the numbers of people in prison with brain injuries it's just astonishing and you think, OK we just don't care about that in a fitness sense ultimately… clearly we don't or they wouldn't all be there." (P10)

DISCUSSION

Legal professionals play a pivotal role in identifying vulnerable individuals within the criminal justice system. Legislation highlights the factors which may make an individual UtP with the conclusion of the test having far reaching effects on the individual accused of a crime, the legal system, the healthcare system, and the victims of crimes. The contrast of extremely rare findings of UtP within the UK (Mackay et al., 2007) and the high incidence of significant mental health issues and cognitive impairments within this forensic population is particularly troublesome (McMillan et al., 2021). The current study sought to explore legal professional's experience of FtP within the criminal justice system, given their numerous key roles including initial identification of vulnerable individuals, finding and choosing an expert witness, communicating with expert witnesses, and interpreting the assessment provided.

The authors identified three themes: *catching cases, finding ways to work together* and *not quite there yet*. '*Catching cases'* illustrated the complexity of issues faced by legal professionals when meeting with potentially vulnerable individuals and their reliance on experience to gain, develop and

refine the necessary skills to identify vulnerable individuals. This theme pertains to the recognition of participants that not all potentially UtP cases are currently 'caught' within the system and reflections from participants shed light on how complex it can be to 'catch' or identify difficulties within a population that present as hugely complex. '*Finding ways to work together'* alludes to both the opportunities and barriers participants faced when working across professional boundaries with expert witnesses and within professional boundaries with other legal professionals. This theme shed light on the interface presented in FtP cases between healthcare and legal professionals and how disagreement, frustration and uncertainty were familiar experiences to many participants. '*Not quite there yet'* pertained to the ongoing improvements and shortcomings of the system including the legislation around FtP, others' perceptions of FtP, along with their own personal development. This theme gave rise to interesting narratives around how and why this complex system could be improved. Taken together these themes highlight the key role participants felt career experience played in their ability to navigate the complex and multi-layered system of FtP within the criminal justice system. Our findings accord with the results of Roger's (2009) qualitative framework analysis study of the views of criminal barristers on the current FtP legislation. The considerable professional challenge of communicating with other professionals has a number of parallels with the 'procedural problems' described by Roger and thus helps further enhance an understanding of the complex role played by those working closely with vulnerable individuals. These problems included failing to identify UtP defendants due to workload pressure and looking primarily for obvious signs of difficulty, such as severe mental health difficulties, rather than other potential difficulties such as cognitive impairment.

The results of this study highlight the many tasks and responsibilities legal professionals bear when working with vulnerable clients. In particular, participants reflected on the difficulties and challenges associated with their key role in identifying potential difficulties in their clients, along with the complexity of working effectively with expert witnesses. Many reflected that the skills and

competencies they had acquired, developed, and refined through significant career experience helped navigate these complexities. Regardless of this experience, participants' narratives reflected the uncertainty they experienced when working within this system. It appeared participants valued their career experience as being an essential component in equipping them with the necessary skills and competencies to navigate the system, notably in the absence of any formal training. As such, the results have shed further light on the high level of skill legal professionals are required to acquire, learn and develop in order to integrate the many sources of information presented to them to identify vulnerable clients. This was often performed in the face of numerous practical challenges such as time constraints, complex legislation, and limited funding. Furthermore, the results enable a greater appreciation of the nuanced and sensitive manner in which participants explored and uncovered potential issues, notably, developed through career experience rather than specific training, along with the recognition that not all potentially UtP cases could be identified. Interestingly, no participants discussed a tangible criterion, assessment or test they utilised or was available to them, to support their decision making and instead applied what was described as an innate or intuitive understanding, which was developed through career experience.

Whilst participants in the present study all possessed extensive experience in this area of work, many acknowledged their lack of training in detecting mental health and cognitive difficulties, instead relying on this career experience to aid in their detection of UtP individuals. These findings offer an interesting perspective to literature regarding intuitive psychology and lay understanding of mental health difficulties (LAbate, 2012). Intuitive psychology is a term used to describe the set of cognitive capacities one possesses to help understand one's own and other's behaviour, specifically in terms of unobservable mental states (Boyer, 2011). Interestingly, intuitive psychology hypothesises that one can detect mental dysfunction in others when the set of assumptions and expectations, otherwise known as one's intuitive psychological expectations, are violated (Boyer, 2011). For example, an individual with psychosis whose speech may provide examples of wrong speech acts,

referential incoherence and violations of turn taking (Corcoran & Frith, 1996) clearly violates one's assumptions around conversational coherence. As such, and somewhat unsurprisingly, psychotic illness is a mental disorder often more readily detected by lay people due to the associated clear violations of our intuitive psychological expectations, as opposed to many other mental health and cognitive difficulties with more subtle behavioural and social cues (Furnham & Chan, 2004). Erritty and Wydell (2013) found that when participants were presented with vignettes outlining symptoms of psychotic illness, positive symptoms were most commonly recognised, such as hallucinatory behaviour, suspiciousness and unusual thought content, however negative symptoms were not identified as those that may require support or treatment. These findings accord with themes from the present study, particularly the '*catching cases*' theme in which participants clearly described observing overt or 'obvious' behavioural cues which they believed to be indicative of mental disorder (commonly of psychotic illness). These obvious signs can be understood as clearly violating participants intuitive psychological expectations, potentially developed, and refined by their career experience of other cases. However, more subtle cues potentially associated with other mental health or cognitive difficulties appeared more challenging for participants to detect or name, instead describing an 'innate sense' or 'gut feeling'. Interestingly, one's intuitive psychological expectations can be developed, strengthened, and refined (Boyer, 2011), providing interesting implications for the role of training in identification of potentially vulnerable individuals.

The findings from the present study also help facilitate an understanding of legal professional's work across professional boundaries in particular with non-legal professionals. This is especially interesting as it sheds light on the opportunities and challenges of mixing professionals of different backgrounds, skill sets, and values. Participants reflected that this cross-boundary working could come with experiences of frustration, disagreement, and considerable resistance with many reflecting that again, career experience could enable clearer, more productive communication with non-legal professionals. The present study provides both support for, and additional insight into, the

literature regarding ‘cross-boundary teaming’ (Edmondson & Harvey, 2018). This literature highlights both ‘surface level attributes’ that can influence successful ‘cross boundary teaming’ such as gender or ethnicity, and the deep level attributes, particularly pertinent to the current research that can influence this ‘teaming’; such as ‘knowledge diversity’ which is influenced by education and values diversity. Importantly, this body of research recognises the challenge of ‘cross boundary’ teaming but also the distinct opportunities for innovation and good practice; highlighted and supported by the themes generated in the present study. The theme ‘finding ways to work together’ appears to pertain to this “knowledge diversity”. The difficulties expressed by participants around the interface between themselves and expert witnesses, was understood as the groups “*coming at it from different perspectives”* (P9); highlighting the difficulty differences in training, education and values could have on this system.

Limitations

When considering the results above, it is important to note some potential limitations of this study. From the outset of the present study, it was recognised that it may prove challenging to recruit legal professionals to reflect and speak to their experience of potential deficiencies of FtP in the legal system. Previous research in this area has highlighted the difficulties of recruiting individuals working in this field (Rogers et al., 2009). Indeed, in the present study some potential participants were identified at an early stage of recruitment, however, did not wish to proceed with an interview citing perceived lack of experience in the field. At this point, no further attempt was made to recruit these participants, however pursuing these potential participants may have offered another perspective to this study. As a result, this research has examined participant experiences of those clearly highly skilled in navigating the current system, who were willing to speak about their experience, raising the potential for volunteer bias (Thompson, 1999); recognition of the fact that those who may hold greater interest in a research topic may be more agreeable to participating. This said, participants recruited in the present study all had significant experience in the field of FtP, giving rise to in-depth

analysis and generation of original information that may be pertinent in informing practice in this under-researched area.

The qualitative interview requires reflection on how the researcher, and the stance they occupy, may influence participant engagement and responses. It is important to acknowledge the stance occupied by the interviewer as a, soon to be qualified, trainee clinical psychologist, could potentially be seen as occupying the role of expert witness to interviewees. This dynamic may have had potential to colour the responses provided by participants. Nevertheless, participants in the present study appeared to speak candidly about difficulties and challenges they had experienced throughout various points of their career and reflected on their varying experiences with expert witnesses. It is of note that the experiences described in the themes, encapsulating feelings of frustration, conflict and resistance ran throughout all narratives regardless of the years of experience of each participant.

Implications and Future Research

RTA studies do not primarily seek to provide generalisable results but seek to identify thematic patterns across the individual accounts of participants. Therefore, implications drawn from this study do not seek to make claims regarding the wider legal profession or expert witnesses. However, the results discussed above may have several potential implications.

The recruitment of participants, which was carried out primarily by snowball sampling resulted in a participant group with significant experience in the field. The themes generated from the group highlight an understanding that it likely takes a substantial number of years of experience to become skilled at navigating the complexities of identifying potentially UtP individuals. Even with this experience, participants reflected that they found the system challenging to navigate and noted the challenges they still face when attempting to identify cases. Therefore, it highlights that those without the benefit of significant experience in this area, may struggle to identify vulnerable individuals in

the absence of training. The implications of this finding are twofold. First, there is an obvious implication around increasing training for those at earlier stages of their careers to help develop the skills and expertise needed to identify potentially vulnerable individuals. This training could be developed and delivered by both expert witnesses and experienced legal professionals to allow for all involved to impart their skills and expertise. Secondly, one can infer that a considerable number of UtP cases may potentially be going unidentified within the criminal justice system as many individuals will only be in contact with those legal professionals without the benefit of experience. This is in consonance with and extends the Law Commission's (2016) assertion and statistical evidence from the criminal justice system in the UK, that not all vulnerable individuals are identified by the system at present.

In light of the theme of *Not quite there yet* and the associated impact of a system that appears to remain complex and challenging, there are several practical improvements that may be appropriate to consider. As discussed, participants felt improvements in the system had taken place over the past years but much more could be done to improve it, primarily to 'catch' and identify cases that may otherwise remain unidentified. Many participants reflected on their own recommendations for practical improvements and these included implementing screening measures for individuals at the point of arrest to identify vulnerabilities at an early stage and the need for increased clarity in the legislation to aid understanding across all stakeholders. In addition, it was clear the participants felt the conclusions drawn in assessments by expert witnesses were not always clear or well communicated, offering potential links to the apparent 'silo effect' that can occur between disciplines (Skelty et al., 2013). This finding, specifically for expert witnesses, may offer implications around the need for specific guidelines and standards around report content and quality. The high level of variability in the reports produced discussed by participants, calls attention to a potential need for increased training for expert witnesses. In addition, the communication between expert witnesses and legal professionals could benefit from increased sharing of information, skills, and knowledge

where possible. In line with this, the difficulties, frustrations, and challenges voiced by participants around the interface between legal and healthcare professionals, highlights again the potential for training opportunities held jointly by various disciplines to aid and promote understanding, communication and sharing of skills.

Given that all interviewees had considerable experience of FtP cases throughout their career, it would be useful if future research could examine whether those more junior in this field of work share similar narratives to those interviewed in the present study. Indeed, the results have highlighted that identification and support of vulnerable individuals requires clear and robust working between all involved within the process. Therefore, involving other stakeholders such as expert witnesses, police and vulnerable accused themselves could be beneficial at shedding further light on this area of work.

Conclusion

Working as a legal professional with vulnerable individuals and navigating the system of FtP is complex and multi-layered. The role of career experience articulated by participants was of central importance in their confidence of navigating this complexity. This experience appeared to help enable participants to identify potentially vulnerable individuals, along with recognition that not all cases of UtP are currently ‘caught’ or identified within the current system. It has shed light on the interface presented in FtP cases of legal professionals and non-legal professionals and the complex and varying experiences of this cross boundary working. Findings highlight several potential implications, in particular an opportunity for improving training opportunities for legal professionals, more specifically those with fewer years of experience and also for expert witnesses. In addition, practical barriers and the ongoing negative attitudes and perceptions about FtP within the system, taken together with lack of training opportunities appear to perpetuate the significant numbers of vulnerable individuals continuing to remain unidentified.

REFERENCES

Acklin, M. W., Fuger, K., & Gowensmith, W. (2015). Examiner agreement and judicial consensus in forensic mental health evaluations. *Journal of Forensic Psychology Practice*, *15*(4), 318–343. https://doi.org/10.1080/15228932.2015.1051447

Akinkunmi, A. A. (2006). Commentary: Competently Assessing Competence to Stand Trial Can Be Trying. *Journal of the American Academy of Psychiatry and the Law*, *34*(Criminal Law&Adjudication [4230]), 189–190.

Baranyi, G., Scholl, C., Fazel, S., Patel, V., Priebe, S., & Mundt, A. P. (2019). Severe mental illness and substance use disorders in prisoners in low-income and middle-income countries: A systematic review and meta-analysis of prevalence studies. *The Lancet Global Health*, *7*(4), e461–e471. https://doi.org/10.1016/S2214-109X(18)30539-4

Boyer, P. (2011). Intuitive expectations and the detection of mental disorder: A cognitive background to folk-psychiatries. *Philosophical Psychology*, *1410*, 821–844. https://doi.org/10.1080/09515089.2010.529049

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, *3*(2), 77–101. https://doi.org/10.1191/1478088706qp063oa

Braun, V., & Clarke, V. (2013). *Successful Qualitative Research: A Practical Guide for Beginners*. SAGE.

Braun, V., & Clarke, V. (2019). Reflecting on reflexive thematic analysis. *Qualitative Research in Sport, Exercise and Health*, *11*(4), 589–597. https://doi.org/10.1080/2159676X.2019.1628806

Braun, V., & Clarke, V. (2021). To saturate or not to saturate? Questioning data saturation as a useful concept for thematic analysis and sample-size rationales. *Qualitative Research in Sport, Exercise and Health*, *13*(2), 201–216. https://doi.org/10.1080/2159676X.2019.1704846

Brewster, E., Willox, E. G., & Haut, F. (2008). Assessing fitness to plead in Scotland's learning disabled. *The Journal of Forensic Psychiatry & Psychology*, *19*(4), 597–602. https://doi.org/10.1080/14789940801912507

British Psychological Society. (2021). *Psychologists as Expert Witnesses—Guidelines and Procedures for England, Wales, Scotland, and Northern Ireland | BPS*. https://www.bps.org.uk/news-and-policy/psychologists-expert-witnesses-guidelines-and-procedures-england-wales-scotland-and

Brown, P. (2019). Unfitness to plead in England and Wales: Historical development and contemporary dilemmas. *Medicine, Science, and the Law*, *59*(3), 187–196. https://doi.org/10.1177/0025802419856761

Bush, S. S. [Ed], Demakis, G. J. [Ed], & Rohling, M. L. [Ed]. (2017). APA handbook of forensic neuropsychology. *APA Handbook of Forensic Neuropsychology.*, *American Psychological Association, Commission for the Recognition of Specialties and Proficiencies in Professional Psychology. (2010a). Clinical neuropsychology. Retrieved from http://www.apa.org/ed/graduate/specialize/neuro.aspx*. https://doi.org/10.1037/0000032-000

Cabeldue M., Green D., McGrath R.E., & Belfi B. (2020). Factors Related to Repeat Forensic Hospital Admissions for Restoration of Competency to Stand Trial. *Journal of Forensic Psychology Research and Practice*, *(Cabeldue) Department of Psychiatry and Behavioral Sciences, Tulane University School of Medicine, New Orleans, United States*. https://doi.org/10.1080/24732850.2020.1834834

Carla, W. (2013). *Introducing Qualitative Research In Psychology*. McGraw-Hill Education (UK).

Corcoran, R., & Frith, C. (1996). Conversational Conduct and the Symptoms of Schizophrenia. *Cognitive Neuropsychiatry*, *1*, 305–318. https://doi.org/10.1080/135468096396460

Cox, J. (2012). Legal issues for treatment providers and evaluators. *Psychiatry of Intellectual Disability: A Practical Manual.*, *Civil Rights&Civil Law [4210]*, 325–337. https://doi.org/10.1002/9781119945925.ch15

Criminal Proceedings in Scotland, 2019-20—Gov.scot. (n.d.). Retrieved 15 July 2021, from https://www.gov.scot/publications/criminal-proceedings-scotland-2019-20/

Drogin, E. Y. [Ed], Dattilio, F. M. [Ed], Sadoff, R. L. [Ed], & Gutheil, T. G. [Ed]. (2011). Handbook of forensic assessment: Psychological and psychiatric perspectives. *Handbook of Forensic Assessment: Psychological and Psychiatric Perspectives.*, *Heilbrun, K. (2001). Principles of forensic mental health assessment. New York, NY: Kluwer Academic/Plenum Press.* https://doi.org/10.1002/9781118093399

Edmondson, A. C., & Harvey, J.-F. (2018). Cross-boundary teaming for innovation: Integrating research on teams and knowledge in organizations. *Human Resource Management Review*, *28*(4), 347–360. https://doi.org/10.1016/j.hrmr.2017.03.002

Erritty, P., & Wydell, T. N. (2013). Are lay people good at recognising the symptoms of schizophrenia? *PLoS ONE*, *8*(1). https://doi.org/10.1371/journal.pone.0052913

Exworthy, T. (2006). Commentary: UK perspective on competency to stand trial. *The Journal of the American Academy of Psychiatry and the Law*, *34*(4), 466–471.

Exworthy, T., & Brown, P. (2017). Fitness to Plead. In *Forensic Psychiatry*. CRC Press.

Fazel, S., & Baillargeon, J. (2011). The health of prisoners. *Lancet (London, England)*, *377*(9769), 956–965. https://doi.org/10.1016/S0140-6736(10)61053-7

Furnham, A., & Chan, E. (2004). Lay theories of schizophrenia: A cross-cultural comparison of British and Hong Kong Chinese attitudes, attributions and beliefs. *Social Psychiatry and Psychiatric Epidemiology: The International Journal for Research in Social and Genetic Epidemiology and Mental Health Services*, *39*(7), 543–552. https://doi.org/10.1007/s00127-004-0787-8

Galappathie, N., & Shaw, A. (2020). Reforming fitness to plead and stand trial legislation in England and Wales. *BJPsych Advances*, *26*(1), 8–15. https://doi.org/10.1192/bja.2019.50

Great Britain, Law Commission, Bean, D. M., & Stationery Office (Great Britain). (2016). *Unfitness to plead. Volume 1, Volume 1,*.

Heller, M. S., Traylor, W. H., Ehrlich, S. M., & Lester, D. (1981). Intelligence, psychosis, and competency to stand trial. *Bulletin of the American Academy of Psychiatry & the Law*, *9*(4), 267–274.

Kelty, S. F., Julian, R., & Ross, A. (2013). Dismantling the Justice Silos: Avoiding the pitfalls and reaping the benefits of information-sharing between forensic science, medicine and law. *Forensic Science International*, *230*(1), 8–15. https://doi.org/10.1016/j.forsciint.2012.10.032

LAbate, L. (2012). *Mental Illnesses: Understanding, Prediction and Control*. BoD – Books on Demand.

Laxton, K. L. (2019). The content and quality of forensic reports of competency to stand trial evaluations. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *80*(1-B(E)), No-Specified.

Mackay, R., Mitchell, B. J., & Howe, L. (2007). A continued upturn in unfitness to plead—More disability in relation to the trial under the 1991 Act. *Criminal Law Review*, 530–545.

Malterud, K., Siersma, V. D., & Guassora, A. D. (2016). Sample Size in Qualitative Interview Studies: Guided by Information Power. *Qualitative Health Research*, *26*(13), 1753–1760. https://doi.org/10.1177/1049732315617444

McMillan, T. M., Aslam, H., Crowe, E., Seddon, E., & Barry, S. J. E. (2021). Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: A cross-sectional study. *The Lancet Psychiatry*, *8*(6), 512–520. https://doi.org/10.1016/S2215-0366(21)00082-1

Ministry of Justice. (2019). *Criminal court statistics quarterly, England and Wales, January to March 2019*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812556/ccsq-bulletin-q1-2019.pdf

Morrow, S. L. (2005). Quality and trustworthiness in qualitative research in counseling psychology. *Journal of Counseling Psychology*, *52*(2), 250–260. https://doi.org/10.1037/0022-0167.52.2.250

Muñoz García-Largo, L., Martí-Agustí, G., Martin-Fumadó, C., & Gómez-Durán, E. L. (2020). Intellectual disability rates among male prison inmates. *International Journal of Law and Psychiatry*, *70*, 101566. https://doi.org/10.1016/j.ijlp.2020.101566

Murrie, D. C., Gardner, B. O., & Torres, A. N. (2020). Competency to stand trial evaluations: A state-wide review of court-ordered reports. *Behavioral Sciences & the Law*, No-Specified. https://doi.org/10.1002/bsl.2436

Murrie, D. C., & Zelle, H. (2015). Criminal competencies. *APA Handbook of Forensic Psychology, Vol. 1: Individual and Situational Influences in Criminal and Civil Contexts.*, *Psychological&Physical Disorders [3200]*, 115–157. https://doi.org/10.1037/14461-005

Olusanya, B. O., Wright, S. M., Nair, M. K. C., Boo, N.-Y., Halpern, R., Kuper, H., Abubakar, A. A., Almasri, N. A., Arabloo, J., Arora, N. K., Backhaus, S., Berman, B. D., Breinbauer, C., Carr, G., Vries, P. J. de, Castillo-Hegyi, C. del, Eftekhari, A., Gladstone, M. J., Hoekstra, R. A., … Collaborators (GRDDC), on behalf of the G. R. on D. D. (2020). Global Burden of Childhood Epilepsy, Intellectual Disability, and Sensory Impairments. *Pediatrics*, *146*(1). https://doi.org/10.1542/peds.2019-2623

Peay, J. (2012). *Fitness to Plead and Core Competencies: Problems and Possibilities* (SSRN Scholarly Paper ID 1991265). Social Science Research Network. https://doi.org/10.2139/ssrn.1991265

Robinson, R., & Acklin, M. W. (2010). Fitness in paradise: Quality of forensic reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*, *33*(3), 131–137. https://doi.org/10.1016/j.ijlp.2010.03.001

Rogers, T. P., Blackwood, N., Farnham, F., Pickup, G., & Watts, M. (2009). Reformulating fitness to plead: A qualitative study. *Journal of Forensic Psychiatry & Psychology*, *20*(6), 815–834. https://doi.org/10.1080/14789940903174139

Ross, A. (2012). Forensic Science in Australia: Where does Australia sit in relation to Trends and Issues in the International Context? *Current Issues in Criminal Justice*, *24*(1), 121–129. https://doi.org/10.1080/10345329.2012.12035948

Swanepoel, M. (2009). The Development of the Interface between Law, Medicine and Psychiatry: Medico-Legal Perspectives in History. *Potchefstroom Electronic Law Journal*, *12*. https://doi.org/10.4314/pelj.v12i4.50051

The Law Commission. (2010). *Unfitness to Plead: Consultation Paper*. https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/cp197_Unfitness_to_Plead_web.pdf

Thompson. (1999). *If you could just provide me with a sample: Examining sampling in qualitative and quantitative research papers* | *Evidence-Based Nursing*. https://ebn.bmj.com/content/2/3/68.short

Viljoen, J. L., & Zapf, P. A. (2002). Fitness to stand trial evaluations: A comparison of referred and non-referred defendants. *The International Journal of Forensic Mental Health*, *1*(2), 127–138. https://doi.org/10.1080/14999013.2002.10471168

Wolf, A. J., & Guyer, M. J. (2009). Mental health expert witness testimony. *Journal of the American Academy of Psychiatry and the Law*, *37*(1), 129–132.

THESIS PORTFOLIO REFERENCES

Acklin, M. W., Fuger, K., & Gowensmith, W. (2015). Examiner agreement and judicial consensus in forensic mental health evaluations. *Journal of Forensic Psychology Practice*, *15*(4), 318–343. https://doi.org/10.1080/15228932.2015.1051447

Akinkunmi, A. A. (2006). Commentary: Competently Assessing Competence to Stand Trial Can Be Trying. *Journal of the American Academy of Psychiatry and the Law*, *34*(Criminal Law&Adjudication [4230]), 189–190.

Alexander Rothschild, M., Erdmann, E., & Parzeller, M. (2007). *Der Patient vor Gericht: Verhandlungs- und Vernehmungsfähigkeit*.

Anderson, S. D., & Hewitt, J. (2002). The effect of competency restoration training on defendants with mental retardation found not competent to proceed. *Law and Human Behavior*, *26*(3), 343–351.

Archer, R. P., Buffington-Vollum, J. K., Stredny, R. V., & Handel, R. W. (2006). A Survey of Psychological Test Use Patterns Among Forensic Psychologists. *Journal of Personality Assessment*, *87*(1), 84–94. https://doi.org/10.1207/s15327752jpa8701_07

Ardila, A., Pineda, D., & Rosselli, M. (2000). Correlation Between Intelligence Test Scores and Executive Function Measures. *Archives of Clinical Neuropsychology*, *15*(1), 31–36. https://doi.org/10.1093/arclin/15.1.31

Arredondo B.C., Marcopulos B.A., Brand J.G., Campbell K.T., & Kent J.-A. (2017). Cognitive functioning and adjudicative competence: Defendants referred for neuropsychological evaluation in a psychiatric inpatient setting. *The Clinical Neuropsychologist*, *31*(8), 1432–1448. https://doi.org/10.1080/13854046.2017.1317032

Baranyi, G., Scholl, C., Fazel, S., Patel, V., Priebe, S., & Mundt, A. P. (2019). Severe mental illness and substance use disorders in prisoners in low-income and middle-income countries: A systematic review and meta-analysis of prevalence studies. *The Lancet Global Health*, *7*(4), e461–e471. https://doi.org/10.1016/S2214-109X(18)30539-4

Biles, D. (1968). Test performance and imprisonment. *Australian & New Zealand Journal of Criminology*, *1*(1), 46–58. https://doi.org/10.1177/000486586800100106

Blake, G. A., & Ogloff, J. R. P. (2020). The correlates of unfitness to stand trial in victoria, australia. *The International Journal of Forensic Mental Health*, *Addington, J., Heinssen, R. K., Robinson, D. G., Schooler, N. R., Marcy, P., Brunette, M. F., Correll, C. U., Estroff, S., Mueser, K. T., Penn, D., Robinson, J. A., Rosenheck, R. A., Azrin, S. T., Goldstein, A. B., Severe, J., Kane, J. M. (2015). Duration of untreated psychosis in community treatment settings in the United States . Psychiatric Services (Washington, D.C.), 66, 7, 753-756. http://dx.doi.org/10.1176/appi.ps.201400124*, No-Specified. https://doi.org/10.1080/14999013.2020.1812013

Boyer, P. (2011). Intuitive expectations and the detection of mental disorder: A cognitive background to folk-psychiatries. *Philosophical Psychology*, *1410*, 821–844. https://doi.org/10.1080/09515089.2010.529049

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, *3*(2), 77–101. https://doi.org/10.1191/1478088706qp063oa

Braun, V., & Clarke, V. (2013). *Successful Qualitative Research: A Practical Guide for Beginners*. SAGE.

Braun, V., & Clarke, V. (2019). Reflecting on reflexive thematic analysis. *Qualitative Research in Sport, Exercise and Health*, *11*(4), 589–597. https://doi.org/10.1080/2159676X.2019.1628806

Braun, V., & Clarke, V. (2021). To saturate or not to saturate? Questioning data saturation as a useful concept for thematic analysis and sample-size rationales. *Qualitative Research in Sport, Exercise and Health*, *13*(2), 201–216. https://doi.org/10.1080/2159676X.2019.1704846

Brewster, E., Willox, E. G., & Haut, F. (2008a). Assessing fitness to plead in Scotland's learning disabled. *Journal of Forensic Psychiatry & Psychology*, *19*(4), 597–602. https://doi.org/10.1080/14789940801912507

Brewster, E., Willox, E. G., & Haut, F. (2008b). Assessing fitness to plead in Scotland's learning disabled. *The Journal of Forensic Psychiatry & Psychology*, *19*(4), 597–602. https://doi.org/10.1080/14789940801912507

British Psychological Society. (2021). *Psychologists as Expert Witnesses—Guidelines and Procedures for England, Wales, Scotland, and Northern Ireland | BPS*. https://www.bps.org.uk/news-and-policy/psychologists-expert-witnesses-guidelines-and-procedures-england-wales-scotland-and

Brown, P. (2019a). Unfitness to plead in England and Wales: Historical development and contemporary dilemmas. *Medicine, Science, and the Law*, *59*(3), 187–196. https://doi.org/10.1177/0025802419856761

Brown, P. (2019b). Modernising Fitness to Plead. *Medicine, Science, and the Law*, *59*, 131–134. https://doi.org/10.1177/0025802419863937

Brown, P., Stahl, D., Appiah-Kusi, E., Brewer, R., Watts, M., Peay, J., & Blackwood, N. (2018). Fitness to plead: Development and validation of a standardised assessment instrument. *PLoS ONE*, *13*(Civil Rights&Civil Law [4210]).

Bush, S. S. [Ed], Demakis, G. J. [Ed], & Rohling, M. L. [Ed]. (2017). APA handbook of forensic neuropsychology. *APA Handbook of Forensic Neuropsychology.*, *American Psychological Association, Commission for the Recognition of Specialties and Proficiencies in Professional Psychology. (2010a). Clinical neuropsychology. Retrieved from http://www.apa.org/ed/graduate/specialize/neuro.aspx*. https://doi.org/10.1037/0000032-000

Cabeldue M., Green D., McGrath R.E., & Belfi B. (2020). Factors Related to Repeat Forensic Hospital Admissions for Restoration of Competency to Stand Trial. *Journal of Forensic Psychology Research and Practice*, *(Cabeldue) Department of Psychiatry and Behavioral*

Sciences, Tulane University School of Medicine, New Orleans, United States. https://doi.org/10.1080/24732850.2020.1834834

Campbell, J. M., & McCord, D. M. (1996). The WAIS-R Comprehension and Picture Arrangement Subtests as Measures of Social Intelligence: Testing Traditional Interpretations. *Journal of Psychoeducational Assessment*, *14*(3), 240–249. https://doi.org/10.1177/073428299601400305

Carla, W. (2013). *Introducing Qualitative Research In Psychology*. McGraw-Hill Education (UK).

Climie, E. A., & Rostad, K. (2011). Test Review: Wechsler Adult Intelligence Scale. *Journal of Psychoeducational Assessment*, *29*(6), 581–586. https://doi.org/10.1177/0734282911408707

Cohen, J. (2013). *Statistical Power Analysis for the Behavioral Sciences*. Routledge. https://doi.org/10.4324/9780203771587

Corcoran, R., & Frith, C. (1996). Conversational Conduct and the Symptoms of Schizophrenia. *Cognitive Neuropsychiatry*, *1*, 305–318. https://doi.org/10.1080/135468096396460

Cox, J. (2012). Legal issues for treatment providers and evaluators. *Psychiatry of Intellectual Disability: A Practical Manual.*, *Civil Rights&Civil Law [4210]*, 325–337. https://doi.org/10.1002/9781119945925.ch15

Criminal Proceedings in Scotland, 2019-20—Gov.scot. (n.d.). Retrieved 15 July 2021, from https://www.gov.scot/publications/criminal-proceedings-scotland-2019-20/

Day A., White J., Howells K., Whitford H., O'Brien K., & Chartres D. (2000). The uses of court-ordered psychiatric and psychological reports in South Australian magistrates' courts. *Psychiatry Psychology and Law*, *7*(2), 254–263.

DerSimonian, R., & Laird, N. (1986). Meta-analysis in clinical trials. *Controlled Clinical Trials*, *7*(3), 177–188. https://doi.org/10.1016/0197-2456(86)90046-2

Dettbarn, E. (2012). Effects of long-term incarceration: A statistical comparison of two expert assessments of two experts at the beginning and the end of incarceration. *International Journal of Law and Psychiatry*, *35*(3), 236–239. https://doi.org/10.1016/j.ijlp.2012.02.014

Drogin, E. Y. (2007). Postconviction Assessment. *Forensic Psychology: Emerging Topics and Expanding Roles.*, *Ackerson, K. S., Brodsky, S. L., Zapf, P. A. (2005). Judges' and psychologists' assessments of legal and clinical factors in competence for execution. Psychology, Public Policy, and Law, 11, 164-193. http://dx.doi.org/10.1037/1076-8971.11.1.164*, 385–417.

Drogin, E. Y. [Ed], Dattilio, F. M. [Ed], Sadoff, R. L. [Ed], & Gutheil, T. G. [Ed]. (2011). Handbook of forensic assessment: Psychological and psychiatric perspectives. *Handbook of Forensic Assessment: Psychological and Psychiatric Perspectives.*, *Heilbrun, K. (2001). Principles of forensic mental health assessment. New York, NY: Kluwer Academic/Plenum Press.* https://doi.org/10.1002/9781118093399

Edmondson, A. C., & Harvey, J.-F. (2018). Cross-boundary teaming for innovation: Integrating research on teams and knowledge in organizations. *Human Resource Management Review*, *28*(4), 347–360. https://doi.org/10.1016/j.hrmr.2017.03.002

Erritty, P., & Wydell, T. N. (2013). Are lay people good at recognising the symptoms of schizophrenia? *PLoS ONE*, *8*(1). https://doi.org/10.1371/journal.pone.0052913

Everington, C. T. (1990). The Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR): A validation study. *Criminal Justice and Behavior*, *17*(Criminal Law&Adjudication [4230]), 147–168. https://doi.org/10.1177/0093854890017002001

Exworthy, T. (2006). Commentary: UK perspective on competency to stand trial. *The Journal of the American Academy of Psychiatry and the Law*, *34*(4), 466–471.

Exworthy, T., & Brown, P. (2017). Fitness to Plead. In *Forensic Psychiatry*. CRC Press.

Fabian, J. M., Thompson, W. W., & Lazarus, J. B. (2011). Life, Death, and IQ: It's Much More than Just a Score: Understanding and Utilizing Forensic Psychological and Neuropsychological Evaluations in Atkins Intellectual Disability/Mental Retardation Cases. *CLEVELAND STATE LAW REVIEW*, *59*, 33.

Fazel, S., & Baillargeon, J. (2011). The health of prisoners. *Lancet (London, England)*, *377*(9769), 956–965. https://doi.org/10.1016/S0140-6736(10)61053-7

Fitch, W. L. (2007). AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial: An American legal perspective. *Journal of the American Academy of Psychiatry and the Law*, *35*(4), 509–513.

Flinn, L. C., Hassett, C. L., & Braham, L. (2018). Development of forensic normative data for the WAIS-IV. *Journal of Forensic Practice*, *20*(1), 58–67.

Furnham, A., & Chan, E. (2004). Lay theories of schizophrenia: A cross-cultural comparison of British and Hong Kong Chinese attitudes, attributions and beliefs. *Social Psychiatry and Psychiatric Epidemiology: The International Journal for Research in Social and Genetic Epidemiology and Mental Health Services*, *39*(7), 543–552. https://doi.org/10.1007/s00127-004-0787-8

Galappathie, N., & Shaw, A. (2020). Reforming fitness to plead and stand trial legislation in England and Wales. *BJPsych Advances*, *26*(1), 8–15. https://doi.org/10.1192/bja.2019.50

Gannon, J. L. (1989). Validation of the Competency Assessment Instrument and elements of competency to stand trial. *Dissertation Abstracts International*, *50*(Criminal Rehabilitation&Penology [3386]), 3675.

Goethals, J. (1981). Imprisonment and cognitive impairment. *Journal of Clinical Psychology*, *37*(2), 418–422. https://doi.org/10.1002/1097-4679(198104)37:2<418::AID-JCLP2270370238>3.0.CO;2-8

Gouvier, W. D., Lees-Haley, P. R., & Hammer, J. H. (2003). The Neuropsychological Examination in the Detection of Malingering in the Forensic Arena: Costs and Benefits. In *Clinical Neuropsychology and Cost Outcome Research*. Psychology Press.

Gowensmith, W. N. (2019). Resolution or resignation: The role of forensic mental health professionals amidst the competency services crisis. *Psychology, Public Policy, and Law*, *25*(1), 1–14. https://doi.org/10.1037/law0000190

Grandjean, N. R. (2006). Neuropsychological predictors of incompetency to stand trial in defendants referred for competency restoration. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *66*(Cognitive Processes [2340]), 3947.

Great Britain, Law Commission, Bean, D. M., & Stationery Office (Great Britain). (2016). *Unfitness to plead. Volume 1, Volume 1,*.

Green, D., Rosenfeld, B., Belfi, B., Rohlehr, L., & Pierson, A. (2012). Use of Measures of Cognitive Effort and Feigned Psychiatric Symptoms with Pretrial Forensic Psychiatric Patients. *International Journal of Forensic Mental Health*, *11*(3), 181–190. https://doi.org/10.1080/14999013.2012.723665

Green, P. (2007). The Pervasive Influence of Effort on Neuropsychological Tests. *Physical Medicine and Rehabilitation Clinics of North America*, *18*, 43–68, vi. https://doi.org/10.1016/j.pmr.2006.11.002

Green, P., Rohling, M. L., Lees-Haley, P. R., & Allen, L. M. (2001). Effort has a greater effect on test scores than severe brain injury in compensation claimants. *Brain Injury*, *15*(12), 1045–1060. https://doi.org/10.1080/02699050110088254

Guyatt, G., Oxman, A. D., Akl, E. A., Kunz, R., Vist, G., Brozek, J., Norris, S., Falck-Ytter, Y., Glasziou, P., deBeer, H., Jaeschke, R., Rind, D., Meerpohl, J., Dahm, P., & Schünemann, H. J. (2011). GRADE guidelines: 1. Introduction—GRADE evidence profiles and summary of findings tables. *Journal of Clinical Epidemiology*, *64*(4), 383–394. https://doi.org/10.1016/j.jclinepi.2010.04.026

Habets, P., Jeandarme, I., Uzieblo, K., Oei, K., & Bogaerts, S. (2015). Intelligence is in the Eye of the Beholder: Investigating Repeated IQ Measurements in Forensic Psychiatry. *Journal of Applied Research in Intellectual Disabilities*, *28*(3), 182–192. https://doi.org/10.1111/jar.12120

Heller, M. S., Traylor, W. H., Ehrlich, S. M., & Lester, D. (1981). Intelligence, psychosis, and competency to stand trial. *Bulletin of the American Academy of Psychiatry & the Law*, *9*(4), 267–274.

Higgins, J. P. T., Thomas, J., Chandler, J., Cumpston, M., Li, T., Page, M., & Welch, V. (2019). *Cochrane Handbook for Systematic Reviews of Interventions: Vol. 2nd Edition* (Version 6.1). John Wiley & Sons.

Higgins, J. P. T., & Thompson, S. G. (2002). Quantifying heterogeneity in a meta-analysis. *Statistics in Medicine*, *21*(11), 1539–1558. https://doi.org/10.1002/sim.1186

Higgins, J. P. T., & Thompson, S. G. (2004). Controlling the risk of spurious findings from meta-regression. *Statistics in Medicine*, *23*(11), 1663–1682. https://doi.org/10.1002/sim.1752

Hoge, S. K., Poythress, N., Bonnie, R., Eisenberg, M., Monahan, J., Feucht-Haviar, T., & Oberlander, L. (1996). Mentally ill and non-mentally ill defendants' abilities to understand information relevant to adjudication: A preliminary study. *Bulletin of the American Academy of Psychiatry & the Law*, *24*(2), 187–197.

Kaufman, A. S., & Lichtenberger, E. O. (2005). *Assessing Adolescent and Adult Intelligence*. John Wiley & Sons.

Kelty, S. F., Julian, R., & Ross, A. (2013). Dismantling the Justice Silos: Avoiding the pitfalls and reaping the benefits of information-sharing between forensic science, medicine and law. *Forensic Science International*, *230*(1), 8–15. https://doi.org/10.1016/j.forsciint.2012.10.032

Klein, K. L. (2010). Neuropsychological and personality predictors of competence to stand trial: A social cognitive perspective. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *72*(2-B), 1167.

Kreslins, A., Robertson, A., & Melville, C. (2015). The effectiveness of psychosocial interventions for anxiety in children and adolescents with autism spectrum disorder: A systematic review and meta-analysis. *Child and Adolescent Psychiatry and Mental Health*, *9*, 22. https://doi.org/10.1186/s13034-015-0054-7

Kuo, S. S., & Eack, S. M. (2020). Meta-Analysis of Cognitive Performance in Neurodevelopmental Disorders during Adulthood: Comparisons between Autism Spectrum Disorder and Schizophrenia on the Wechsler Adult Intelligence Scales. *Frontiers in Psychiatry*, *11*. https://doi.org/10.3389/fpsyt.2020.00187

LAbate, L. (2012). *Mental Illnesses: Understanding, Prediction and Control*. BoD – Books on Demand.

Lally, S. J. (2003). What tests are acceptable for use in forensic evaluations? A survey of experts. *Professional Psychology: Research and Practice*, *34*(Forensic Psychology&Legal Issues [4200]), 491–498. https://doi.org/10.1037/0735-7028.34.5.491

Laxton, K. L. (2019). The content and quality of forensic reports of competency to stand trial evaluations. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *80*(1-B(E)), No-Specified.

Lees-Haley, P. R., Smith, H. H., Williams, C. W., & Dunn, J. T. (1996). Forensic neuropsychological test usage: An empirical survey. *Archives of Clinical Neuropsychology*, *11*(1), 45–51. https://doi.org/10.1016/0887-6177(95)00011-9

Lesser, F. I. (1989). Formulating a prediction model for regaining competency to stand trial. *Dissertation Abstracts International*, *51*(2-B), 993.

Macaskill, P., Walter, S. D., & Irwig, L. (2001). A comparison of methods to detect publication bias in meta-analysis. *Statistics in Medicine*, *20*(4), 641–654. https://doi.org/10.1002/sim.698

Mackay, R., Mitchell, B. J., & Howe, L. (2007). A continued upturn in unfitness to plead—More disability in relation to the trial under the 1991 Act. *Criminal Law Review*, 530–545.

Malterud, K., Siersma, V. D., & Guassora, A. D. (2016). Sample Size in Qualitative Interview Studies: Guided by Information Power. *Qualitative Health Research*, *26*(13), 1753–1760. https://doi.org/10.1177/1049732315617444

Marsh, I. C. (2019). *Understanding the impact of psychosocial risk factors on the maternal-fetal/infant relationship in the perinatal period*. https://era.ed.ac.uk/handle/1842/36665

McDermott, P. A., Fantuzzo, J. W., & Glutting, J. J. (1990). Just Say No to Subtest Analysis: A Critique on Wechsler Theory and Practice. *Journal of Psychoeducational Assessment*, *8*(3), 290–302. https://doi.org/10.1177/073428299000800307

McGuire, C., Crawford, S., & Evans, J. J. (2019). Effort Testing in Dementia Assessment: A Systematic Review. *Archives of Clinical Neuropsychology*, *34*(1), 114–131. https://doi.org/10.1093/arclin/acy012

McMillan, T. M., Aslam, H., Crowe, E., Seddon, E., & Barry, S. J. E. (2021). Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: A cross-sectional study. *The Lancet Psychiatry*, *8*(6), 512–520. https://doi.org/10.1016/S2215-0366(21)00082-1

Melton, G. B., Petrila, J., Poythress, N. G., Slobogin, C., Lyons, P. M. Jr. [Col], & Otto, R. K. [Col]. (2007). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers. *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers.*, *20 C.F.R. 404.1501 et seq. (1985) (Regulations Governing Consent to Research).*

Ministry of Justice. (2019). *Criminal court statistics quarterly, England and Wales, January to March 2019*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812556/ccsq-bulletin-q1-2019.pdf

Moher, D., Liberati, A., Tetzlaff, J., Altman, D. G., & Group, T. P. (2009). Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement. *PLOS Medicine*, *6*(7), e1000097. https://doi.org/10.1371/journal.pmed.1000097

Morrow, S. L. (2005). Quality and trustworthiness in qualitative research in counseling psychology. *Journal of Counseling Psychology*, *52*(2), 250–260. https://doi.org/10.1037/0022-0167.52.2.250

Mossman, D. (2007). Predicting restorability of incompetent criminal defendants. *Journal of the American Academy of Psychiatry and the Law*, *35*(1), 34–43.

Moynan, C. R., & McMillan, T. M. (2018). Prevalence of head injury and associated disability in prison populations: A systematic review. *Journal of Head Trauma Rehabilitation*, *33*(4), 275–282. https://doi.org/10.1097/HTR.0000000000000354

Muñoz García-Largo, L., Martí-Agustí, G., Martin-Fumadó, C., & Gómez-Durán, E. L. (2020). Intellectual disability rates among male prison inmates. *International Journal of Law and Psychiatry*, *70*, 101566. https://doi.org/10.1016/j.ijlp.2020.101566

Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are Forensic Experts Biased by the Side That Retained Them? *Psychological Science*, *24*(10), 1889–1897. https://doi.org/10.1177/0956797613481812

Murrie, D. C., Gardner, B. O., & Torres, A. N. (2020). Competency to stand trial evaluations: A state-wide review of court-ordered reports. *Behavioral Sciences & the Law*, No-Specified. https://doi.org/10.1002/bsl.2436

Murrie, D. C., & Zelle, H. (2015a). Criminal competencies. *APA Handbook of Forensic Psychology, Vol. 1: Individual and Situational Influences in Criminal and Civil Contexts.*, *Psychological&Physical Disorders [3200]*, 115–157. https://doi.org/10.1037/14461-005

Murrie, D. C., & Zelle, H. (2015b). Criminal competencies. *APA Handbook of Forensic Psychology, Vol. 1: Individual and Situational Influences in Criminal and Civil Contexts.*, *Psychological&Physical Disorders [3200]*, 115–157. https://doi.org/10.1037/14461-005

Neal, T., & Grisso, T. (2014). Assessment Practices and Expert Judgment Methods in Forensic Psychology and Psychiatry: An International Snapshot. *Criminal Justice and Behavior*, *41*, 1406–1421. https://doi.org/10.1177/00093854814548449

Nestor, P. G., Daggett, D., Haycock, J., & Price, M. (1999). Competence to stand trial: A neuropsychological inquiry. *Law and Human Behavior*, *23*(4), 397–412.

Nussbaum D., Mamak M., Tremblay H., Wright P., & Callaghan J. (1998). The metfors fitness questionnaire (MFQ): A self-report measure for screening competency to stand trial. *American Journal of Forensic Psychology*, *16*(3), 41–65.

Olusanya, B. O., Wright, S. M., Nair, M. K. C., Boo, N.-Y., Halpern, R., Kuper, H., Abubakar, A. A., Almasri, N. A., Arabloo, J., Arora, N. K., Backhaus, S., Berman, B. D., Breinbauer, C., Carr, G., Vries, P. J. de, Castillo-Hegyi, C. del, Eftekhari, A., Gladstone, M. J., Hoekstra, R. A., … Collaborators (GRDDC), on behalf of the G. R. on D. D. (2020). Global Burden of Childhood Epilepsy, Intellectual Disability, and Sensory Impairments. *Pediatrics*, *146*(1). https://doi.org/10.1542/peds.2019-2623

Otto, R. K., Poythress, N. G., Nicholson, R. A., Edens, J. F., Monahan, J., Bonnie, R. J., Hoge, S. K., & Eisenberg, M. (1998). Psychometric properties of the MacArthur Competence Assessment Tool-Criminal Adjudication. *Psychological Assessment*, *10*(Criminal Law&Adjudication [4230]), 435–443. https://doi.org/10.1037/1040-3590.10.4.435

Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., Shamseer, L., Tetzlaff, J. M., Akl, E. A., Brennan, S. E., Chou, R., Glanville, J., Grimshaw, J. M., Hróbjartsson, A., Lalu, M. M., Li, T., Loder, E. W., Mayo-Wilson, E., McDonald, S., … Moher, D. (2021). The PRISMA 2020 statement: An updated guideline for reporting systematic reviews. *BMJ*, *372*, n71. https://doi.org/10.1136/bmj.n71

Parker, B. C. (2009). Competence to stand trial: Analysis of cognitive capacities as measured by the Wechsler Abbreviated Scale of Intelligence, the Wechsler Adult Intelligence Scale-III,

and the role of gender and diagnosis. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *69*(10-B), 6429.

Peay, J. (2012). *Fitness to Plead and Core Competencies: Problems and Possibilities* (SSRN Scholarly Paper ID 1991265). Social Science Research Network. https://doi.org/10.2139/ssrn.1991265

Pirelli, G. (2011). A meta-analytic review of competency to stand trial research. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *71*(12-B), 7734.

Poythress, N. G., Bonnie, R. J., Monahan, J., Otto, R., & Hoge, S. K. (2002). Adjudicative competence: The MacArthur studies. *Adjudicative Competence: The MacArthur Studies.*, *Adams v. United States ex rel. McCann, 317 U.S. 269, 275 (1942).* https://doi.org/10.1007/978-1-4419-8493-7

Poythress, N. G., Hoge, S. K., Bonnie, R. J., Monahan, J., Eisenberg, M., & Feucht-Haviar, T. (1998). The competence-related abilities of women criminal defendants. *Journal of the American Academy of Psychiatry and the Law*, *26*(Clinical Psychological Testing [2224]), 215–222.

Rix, K. J. B. (2012). Expert evidence on trial: Commentary on… Psychiatric Aspects of Fraud Offending. *Advances in Psychiatric Treatment*, *18*(3), 193–197. https://doi.org/10.1192/apt.bp.111.009175

Robinson, R., & Acklin, M. W. (2010). Fitness in paradise: Quality of forensic reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*, *33*(3), 131–137. https://doi.org/10.1016/j.ijlp.2010.03.001

Rogers, R., Tillbrook, C., & Sewell, K. (2004). *Evaluation of Competency to Stand Trial-Revised (ECST-R) and professional manual. Odessa, FL: Psychological Assessment Resources*.

Rogers, T. P., Blackwood, N., Farnham, F., Pickup, G., & Watts, M. (2009). Reformulating fitness to plead: A qualitative study. *Journal of Forensic Psychiatry & Psychology*, *20*(6), 815–834. https://doi.org/10.1080/14789940903174139

Ross, A. (2012). Forensic Science in Australia: Where does Australia sit in relation to Trends and Issues in the International Context? *Current Issues in Criminal Justice*, *24*(1), 121–129. https://doi.org/10.1080/10345329.2012.12035948

Ryba, N. L., & Zapf, P. A. (2011). The influence of psychiatric symptoms and cognitive abilities on competence-related abilities. *The International Journal of Forensic Mental Health*, *10*(1), 29–40. https://doi.org/10.1080/14999013.2010.550982

Saklofske, D. H., Chelune, G. J., Heaton, R. K., Ivnik, R. J., Bornstein, R., Prifitera, A., & Ledbetter, M. F. (2003). *Clinical Interpretation of the WAIS-III and WMS-III*. Academic Press.

Schmucker, C. M., Blümle, A., Schell, L. K., Schwarzer, G., Oeller, P., Cabrera, L., Elm, E. von, Briel, M., Meerpohl, J. J., & Consortium, on behalf of the O. (2017). Systematic review finds that study data not published in full text articles have unclear impact on meta-analyses results in medical research. *PLOS ONE*, *12*(4), e0176210. https://doi.org/10.1371/journal.pone.0176210

Shields, C. L. (2004). Competence to stand trial: Cognitive-related abilities and other factors. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, *66*(2-B), 1186.

Siegert M. & Weiss K.J. (2007). Who is an expert? Competency evaluations in mental retardation and borderline intelligence. *Journal of the American Academy of Psychiatry and the Law*, *35*(3), 346–349.

Simon, M. J. (1987). Use of the Proverbs Test in the assessment of competency to stand trial. *Psychological Reports*, *60*(Criminal Law&Adjudication [4230]), 1166. https://doi.org/10.2466/pr0.1987.60.3c.1166

Swanepoel, M. (2009). The Development of the Interface between Law, Medicine and Psychiatry: Medico-Legal Perspectives in History. *Potchefstroom Electronic Law Journal*, *12*. https://doi.org/10.4314/pelj.v12i4.50051

The Law Commission. (2010). *Unfitness to Plead: Consultation Paper*. https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/cp197_Unfitness_to_Plead_web.pdf

Thompson. (1999). *If you could just provide me with a sample: Examining sampling in qualitative and quantitative research papers | Evidence-Based Nursing*. https://ebn.bmj.com/content/2/3/68.short

Tomlin, J., Lega, I., Braun, P., Kennedy, H. G., Herrando, V. T., Barroso, R., Castelletti, L., Mirabella, F., Scarpa, F., Völlm, B., Pham, T., Müller-Isberner, R., Taube, M., Rivellini, G., Calevro, V., Liardo, R., Pennino, M., Markiewicz, I., Barbosa, F., … the experts of COST Action IS1302. (2020). Forensic mental health in Europe: Some key figures. *Social Psychiatry and Psychiatric Epidemiology*. https://doi.org/10.1007/s00127-020-01909-6

Tulsky, D. S., Zhu, J., & Prifitera, A. (2000). Chapter 5—Assessment of Adult Intelligence with the WAIS-III. In G. Goldstein & M. Hersen (Eds.), *Handbook of Psychological Assessment (Third Edition)* (pp. 97–129). Pergamon. https://doi.org/10.1016/B978-008043645-6/50083-5

van der Wijngaart, S., Hawkins, R., & Golus, P. (2015). The role of psychologists in the South Australian fitness to stand trial process. *Psychiatry, Psychology and Law*, *22*(1), 75–93. https://doi.org/10.1080/13218719.2014.919626

Vanderploeg, R. D. (2014). *Clinician's Guide To Neuropsychological Assessment*. Psychology Press.

Viljoen, J. L., & Zapf, P. A. (2002). Fitness to stand trial evaluations: A comparison of referred and non-referred defendants. *The International Journal of Forensic Mental Health*, *1*(2), 127–138. https://doi.org/10.1080/14999013.2002.10471168

Webber, T. A., & Soble, J. R. (2018). Utility of various WAIS-IV Digit Span indices for identifying noncredible performance validity among cognitively impaired and unimpaired examinees.

The Clinical Neuropsychologist, *32*(4), 657–670. https://doi.org/10.1080/13854046.2017.1415374

Wechsler, D. (1939). *The measurement of adult intelligence* (pp. ix, 226). Williams & Wilkins Co. https://doi.org/10.1037/10020-000

Wechsler, D. (2008). *WAIS-IV: Wechsler adult intelligence scale*. Pearson.

Wechsler, D., 1896-1981. (1981). *WAIS-R : Wechsler adult intelligence scale-revised*. https://search.library.wisc.edu/catalog/999605091402121

Wechsler, D. & Psychological Corporation. (1997). *WAIS-III: Administration and scoring manual : Wechsler Adult Intelligence Scale*. Psychological Corporation.

White, A. J., Batchelor, J., Meares, S., Pulman, S., & Howard, D. (2016). Fitness to stand trial in one Australian jurisdiction: The role of cognitive abilities, neurological dysfunction and psychiatric disorders. *Psychiatry, Psychology and Law*, *23*(Criminal Law&Adjudication [4230]), 499–511. https://doi.org/10.1080/13218719.2015.1080152

White, A. J., Batchelor, J., Pulman, S., & Howard, D. (2012). The role of cognitive assessment in determining fitness to stand trial. *The International Journal of Forensic Mental Health*, *11*(Clinical Psychological Testing [2224]), 102–109. https://doi.org/10.1080/14999013.2012.688091

White, A. J., Meares, S., & Batchelor, J. (2014). The role of cognition in fitness to stand trial: A systematic review. *Journal of Forensic Psychiatry & Psychology*, *25*(1), 77–99. https://doi.org/10.1080/14789949.2013.868916

White A.J., Meares S., & Batchelor J. (2014). The role of cognition in fitness to stand trial: A systematic review. *Journal of Forensic Psychiatry and Psychology*, *25*(1), 77–99. https://doi.org/10.1080/14789949.2013.868916

Wisdom, N. M., Pastorek, N. J., Miller, B. I., Booth, J. E., Romesser, J. M., Linck, J. F., & Sim, A. H. (2014). PTSD and cognitive functioning: Importance of including performance validity

testing. *The Clinical Neuropsychologist*, *28*(1), 128–145. https://doi.org/10.1080/13854046.2013.863977

Wolf, A. J., & Guyer, M. J. (2009). Mental health expert witness testimony. *Journal of the American Academy of Psychiatry and the Law*, *37*(1), 129–132.

Zapf, P., Kukucka, J., Kassin, S., & Dror, I. (2017). Cognitive Bias in Forensic Mental Health Assessment: Evaluator Beliefs About Its Nature and Scope. *Psychology, Public Policy, and Law*. https://doi.org/10.1037/law0000153

APPENDIX 1: Author Guidelines for Psychology, Public Policy and Law

Submission

Psychology, Public Policy, and Law® is now using a software system to screen submitted content for similarity with other published content. The system compares each submitted manuscript against a database of 25+ million scholarly publications, as well as content appearing on the open web.

The journal encourages authors to write comprehensive pieces, rather than submitting smaller pieces to multiple journals.

Psychology, Public Policy, and Law encourages the submission by scholars of empirical studies, as well as theoretical, conceptual, and critical reviews dealing with psychology and with relevant information derived from related disciplines, law, and policy studies.

Psychology, Public Policy, and Law publishes replications. Submissions should include "A Replication of XX Study" in the subtitle of the manuscript as well as in the abstract.

Masked Review Policy

This journal has adopted a policy of masked review for all submissions.
Each copy of the manuscript must include a separate title page with the authors' names and affiliations, and these should not appear anywhere else in the manuscript. Footnotes that identify the authors must be typed on a separate page.

Make sure that the manuscript itself contains no clues to the authors' identity, including grant numbers, names of institutions providing IRB approval, self-citations, and links to online repositories for data, materials, code, or preregistrations (e.g., Create a View-only Link for a Project).

Please ensure that the final version for production includes a byline and full author note for typesetting.

Manuscript Preparation

Prepare manuscripts according to the *Publication Manual of the American Psychological Association* using the 7th edition. Manuscripts may be copyedited for bias-free language (see Chapter 5 of the *Publication Manual*). APA Style and Grammar Guidelines for the 7th edition are available.

Review APA's Journal Manuscript Preparation Guidelines before submitting your article.
There is no page restriction and all copies should be double-spaced. Other formatting instructions, as well as instructions on preparing tables, figures, references, metrics, and abstracts, appear in the Manual. Additional guidance on APA Style is available on the APA Style website.

Below are additional instructions regarding the preparation of display equations, computer code, and tables.

Display Equations

We strongly encourage you to use MathType (third-party software) or Equation Editor 3.0 (built into pre-2007 versions of Word) to construct your equations, rather than the equation support that is built into Word 2007 and Word 2010. Equations composed with the built-in Word 2007/Word 2010 equation support are converted to low-resolution graphics when they enter the production process and must be rekeyed by the typesetter, which may introduce errors.

Journal Article Reporting Standards and the 21-Word Statement

Authors must adhere to the APA Style Journal Article Reporting Standards (JARS) for quantitative, qualitative, and mixed methods. The standards offer ways to improve transparency in reporting to ensure that readers have the information necessary to evaluate the quality of the research and to facilitate collaboration and replication.
The JARS:
Recommend the division of hypotheses, analyses, and conclusions into primary, secondary, and exploratory groupings to allow for a full understanding of quantitative analyses presented in a manuscript and to enhance reproducibility;
Offer modules for authors reporting on replications, clinical trials, longitudinal studies, and observational studies, as well as the analytic methods of structural equation modeling and Bayesian analysis;
Include guidelines on reporting of study preregistration (including making protocols public); participant characteristics (including demographic characteristics); inclusion and exclusion criteria; psychometric characteristics of outcome measures and other variables; and planned data diagnostics and analytic strategy.

JARS-Qual offers guidance to researchers using qualitative methods such as narrative data, grounded theory, phenomenological, critical, discursive, performative, ethnographic, consensual qualitative, case study, psychobiography, and thematic analysis approaches.
The guidelines focus on transparency in methods reporting, recommending descriptions of how the researcher's own perspective affected the study, as well as the contexts in which the research and analysis took place.

Manuscripts must also report (1) how the sample size was determined, (2) all data exclusions, (3) all manipulations, and (4) all study measures. See Simmons, Nelson, & Simonsohn (2012) for details; include the following statement in the Method section:
We report how we determined our sample size, all data exclusions (if any), all manipulations, and all measures in the study.

Transparency and Openness

Data, Materials, and Code

Authors must state whether data and study materials are available and, if so, where to access them. Recommended repositories include APA's repository on the Open Science Framework (OSF), or authors can access a full list of other recommended repositories.
In both the Author Note and at the end of the Method section, specify whether and where the data and material are available or note the legal or ethical reasons for not doing so. For submissions with quantitative or simulation analytic methods, state whether the study analysis code is available, and, if so, where to access it (or the legal or ethical reason why it is not available).

For example:
All data have been made publicly available at the [repository name] and can be accessed at [persistent URL or DOI].
Materials and analysis code for this study are not available.
The code behind this analysis/simulation has been made publicly available at the [repository name] and can be accessed at [persistent URL or DOI].
If the study is one of many conducted using a larger data set, authors might want to make available only the data relevant to this report and, if the data set includes sensitive personal information about the participants, authors should exclude information that might make it possible to identify them.

Preregistration of Studies and Analysis Plans

Preregistration of studies and specific hypotheses can be a useful tool for making strong theoretical claims. Likewise, preregistration of analysis plans can be useful for distinguishing

confirmatory and exploratory analyses. Investigators are encouraged to preregister their studies and/or analysis plans prior to conducting the research (e.g., ClinicalTrials.gov or the Preregistration for Quantitative Research in Psychology template) via a publicly accessible registry system (e.g., OSF, ClinicalTrials.gov, or other trial registries in the WHO Registry Network).

Articles must state whether or not any work was preregistered and, if so, where to access the preregistration. Preregistrations must be available to reviewers; authors may submit a masked copy via stable link or supplemental material. Links in the Method section and the Author Note should be replaced with an identifiable copy on acceptance.

For example:

This study's design was preregistered; see [STABLE LINK OR DOI].

This study's design and hypotheses were preregistered; see [STABLE LINK OR DOI].

This study's analysis plan was preregistered; see [STABLE LINK OR DOI].

This study was not preregistered.

Academic Writing and English Language Editing Services

Authors who feel that their manuscript may benefit from additional academic writing or language editing support prior to submission are encouraged to seek out such services at their host institutions, engage with colleagues and subject matter experts, and/or consider several vendors that offer discounts to APA authors.

Please note that APA does not endorse or take responsibility for the service providers listed. It is strictly a referral service.

Use of such service is not mandatory for publication in an APA journal. Use of one or more of these services does not guarantee selection for peer review, manuscript acceptance, or preference for publication in any APA journal.

Submitting Supplemental Materials

APA can place supplemental materials online, available via the published article in the PsycARTICLES®database. Please see Supplementing Your Article With Online Material for more details.

Abstract and Keywords

All manuscripts must include an abstract containing a maximum of 250 words typed on a separate page. After the abstract, please supply up to five keywords or brief phrases.

APPENDIX 2: Study Protocol

Doctorate in Clinical Psychology

Thesis Research Proposal
(For Methodological Review Only)

This form is for methodological review of projects that are **not** being submitted as assessed work for Research 1. (e.g. where a trainee has already received a pass mark for Research 1, but subsequently changed the intended thesis project)

The form will be reviewed by a member of the academic team and will receive feedback including an evaluation of the viability of the project and any recommended adjustments. Significant concerns about viability will be flagged to the Programme Director and Research Director and a decision made about whether the project can proceed in its current form.

We expect 2-3 pages A4 for sections 1-8

Trainee Name
Susan Harris

Provisional Thesis Title
Understanding legal professionals' experience of the assessment of fitness to plead

Proposed Setting

Allocated Thesis Project Supervisors	
Clinical	
Academic 1	Dr Suzanne O'Rourke
Academic 2	
Others Involved	

Anticipated Month / Year of Submission (Usually May of final year)
May 2021

Date Form Submitted / Version
December 2020

Please Note: Whilst this is not an ethics review process, where questions have some similarities to questions contained in the NHS IRAS Research Ethics form, the corresponding IRAS question numbers are given in parentheses. This is intended to facilitate completion of NHS ethics where such approval is needed.

Section 1: Introduction

Provide a brief overview of the rationale and scientific justification for the research
500 words maximum
Relevant to IRAS A12

The test of whether a person may be 'fit to plead' focuses upon the key questions of whether a defendant is able to understand the nature of the charge against them, the need to enter a plea to a charge and the consequences of such a plea, the purpose of a trial, their ability to instruct a legal representative and to follow the course of a trial. Conditions associated with significant cognitive impairment are common in forensic populations, such as traumatic brain injury (TBI), significant drug and alcohol use, along with other potential neurodevelopmental influences such as trauma (e.g. O'Rourke et al., 2020). Indeed, some studies suggest the prevalence of such conditions excess of 40% in forensic populations (e.g. Durand et al., 2017). Such conditions are associated with significant and wide-ranging cognitive impairments in, but not limited to, attention and memory; all of which have been associated with an individual's fitness to plead (White et al., 2014).

Startingly, a study in England and Wales found that only 66 defendants per year were found unfit to plead between 1997 and 2001 (Mackay et al., 2007). Indeed, one study indicated that of those found unfit to plead, the majority had passed through the criminal justice system normally in previous contacts (Grubin, 1991). Concerns around an individual's ability to engage in the above competencies must be raised by the individual's legal representative. These concerns require referral to, and evaluation by, an expert witness, who may be a clinical and other practitioner psychologist or psychiatrist. These expert witnesses provide expert evidence in such cases. The evaluation of an individual's fitness to plead involves interaction between legal and healthcare professionals (Peay, 2012); raising challenges of their intersecting skills, competencies and values.

Whilst the ultimate determination of FtP must be made by the court, it has been found to be highly influenced by the expert psychiatric or psychological witnesses (e.g., Zapf et al., 2004); highlighting these reports are among the most influential forms of forensic evaluation (Murrie and Zelle, 2015). Given that the court's decision will be informed by the report, rates of agreement between courts and expert witnesses have unsurprisingly been found to be high, (Zapf et al, 2004; Gowensmith et al., 2012); with rates of agreement found to exceed 90%. In the absence of best practice guidelines, the quality of such reports and evidence has been questioned (e.g., Robinson & Acklin, 2010). For example, research has highlighted that few expert witness assessments examine abilities that are essential if a defendant is to participate fully in proceedings such as a defendant's impulsiveness, their ability to inhibit verbal responses and their ability to remember, manipulate and consider information relevant to the consequences of their actions or decisions during their trial (e.g. Pirelli et al., 2011).

Whilst much commentary exists regarding the quality of such assessments including the absence of particular measures etc, little is known about the experience of legal professionals in this process. Legal professionals are tasked with the significant responsibility of identifying clients that may be at risk of unfitness to plead, then in referring them for expert witness evaluation if necessary. There is a dearth in the literature regarding their experience of this identification and referral process. In one qualitative study, Rogers et al. (2009) unsurprisingly found that criminal barristers had concerns about defendants 'slipping through the net' and were in agreement that the current threshold for unfitness to plead was

too high. Since this study, the Law Commission (2016) released a report asserting that reform of the current system was required, and highlighted issues with the current process including the lack of screening procedures for unfitness to plead and the erroneous continued focus on psychiatric disorder being the most significant contribution to unfitness to plead, rather than other cognitive deficits.

Furthermore, as mentioned, agreement between the courts and expert witnesses has consistently been reported at high levels, yet on occasion, courts do disagree and question the evidence of expert witnesses, and again, little is known about legal professionals' experience of this process specifically.

Against the backdrop laid out above, there is a need to undertake research that provides greater insight in this area and to explore the specific experiences of those involved in this process; including but not limited to, their experience of; identification and referral process, the commissioning of reports, the reports themselves and the expert on the stand. It will utilize reflexive thematic analysis to better understand legal professionals' experiences and importantly, help identify any potential barriers to identification of vulnerable defendants within the criminal justice system. Furthermore, increasing understanding around this process may help guide expert witnesses to produce reports of high quality. This project will help highlight any specific strengths, difficulties and barriers in the current process to ultimately improve the assessment process for defendants, victims, legal professionals and expert witnesses.

Section 2: Research Questions / Objectives

What are the principal and secondary research questions / objectives?
IRAS A10

Primary research question:
Understanding legal professionals' experience of the assessment of fitness to plead

Secondary research questions:
What are legal professionals' experience of identifying vulnerable defendants that may be unfit to plead?
What are the strengths and weaknesses of the current assessment process?
What are legal professionals' experience of courts willingness to accept the opinion offered?

Section 3: Methodology

Give a summary of your design and methodology
This should be clear enough for reader to know what will happen at each stage of the project. Include **principal inclusion and exclusion criteria and how data will be collected or identified.**
IRAS A13

Ethics:
Sponsorship review by HiSS Governance and Approval from the University of Edinburgh, School of Health and Social Science is required.

Study Population:
Participants will be legal professionals working in the United Kingdom, specifically working in the area of criminal law. A purposive sampling method will be implemented of professionals working in criminal law. The sample will be recruited from around the United Kingdom, by social contacts and colleagues of the lead researcher and via word of mouth of included participants (snowball sampling).

Inclusion:

Legal professionals such as barristers, solicitors and/or judges
Practicing in the United Kingdom
Practicing in the field of criminal law
Professional experience of working on cases in which fitness to plead was assessed by expert witnesses
Able to speak and read English
Able to provide informed consent to participate

Exclusion:
Legal professionals with no professional experience of fitness to plead
Legal professionals working out with the area of criminal law
Legal professionals practicing outside of the United Kingdom

Procedure
Social contacts and colleagues of the research lead will be asked to distribute the Participant Information Sheet (PIS) to individuals whom they know meet inclusion criteria of the study. Potential participants can then either contact the lead researcher directly or indeed, may provide their contact details (name, email, phone number) to their contact, who can then pass this on to the lead researcher to contact directly. It is expected, through the first recruited participants, snowball sampling may be utilised by those who have engaged in the study passing details to those they may know who may be interested in participating. Similarly, these individuals can then either contact the lead researcher directly or pass their details on through participants.

The lead researcher will communicate by phone or email (depending on participant preference) to provide additional information on the study research questions and address other practical issues regarding participation in the study e.g. interview duration, methods of interview (phone or skype). Demographic data will be discussed to ensure all inclusion criteria is met. If, following this initial contact, the participant is willing to participate in the study, a suitable time and date for an interview will be arranged with the participant.

A copy of a demographic sheet, PIS and consent form will be posted or emailed to the participant prior to the arranged interview. Before each interview begins, the lead researcher will reiterate the content of the PIS and consent form; recorded verbal consent will be obtained at this point. Agreement regarding further contact between participant and lead researcher will also be agreed at this point, including sharing of the completed research paper. Inclusion criteria will be again checked at this point and upon being met, semi-structured interviews will be conducted.

All interviews will be audio recorded on an encrypted and password protected device. Interviews conducted over video calling software will be recorded using the record function on the software where possible. Verbal consent for participant and verbal consent for understanding each point on the consent forms will also be recorded.

All files (video and audio) will be stored using the secure SharePoint data storage location supported by the University of Edinburgh, which can be accessed only by the lead researcher and supervisor.

Following interviews, transcription of audio recordings and anonymisation will take place as soon as possible. These anonymised transcripts will also be stored on Sharepoint prior to being uploaded to the online platform Nvivo for data analysis. Recordings will be deleted immediately after transcription.

Section 4: Sample Size

What sample size is needed for the research and how did you determine this?

For quantitative projects, outline the relevant Power calculations and the rationale for assuming given effect sizes. For qualitative projects, outline your reasoning for assuming that this sample size will be sufficient to address the study's aims. If data is to be collected outline reasons for your confidence in being able to achieve a sample of at least this size.

IRAS A59 and IRAS A60

A sample size of 4-10 interviews was deemed sufficient for professional doctorates by Smith et al. (2009); this suggested size acknowledges that successful qualitative analysis requires reflection and time which may be inhibited by larger samples. Indeed, much commentary on sample size within qualitative research has not resulted in widespread agreement (Vasileiou et al., 2018) and the concept of 'data saturation' remains a poorly understood concept in qualitative research (Braun and Clarke, 2019). Therefore, in the present study, due to the homogenous sample, and the depth of data generated from each participant, a small sample will be sought to generate a rich, complex and multi-faceted understanding of the experience of each participant recruited.

Section 5: Analysis

Describe the methods of analysis (statistical or other appropriate methods, e.g. for qualitative methods) by which the data will be evaluated to meet the study objectives

IRAS A62

Reflexive thematic analysis will be used to analyse the data; a process of analysing qualitative data by means of identifying, analysing and reporting patterns (themes) within a data set (Braun and Clarke, 2006;2019). This form of qualitative analysis is not bound to a particular theory and thus can be applied either inductively or deductively. In the present study, the data will be coded inductively (bottom-up approach); this approach which will aim to understand the experience of legal professionals which explicitly recognizes that data will be analysed and interpreted with explicit recognition and reflection of assumptions that may inform the lead researcher's analysis (e.g. paradigmatic assumptions such as ongoing issues with the justice system's treatment of defendants in the United Kingdom). An integral and unique strength of reflexive thematic analysis aspect is the idea that theme development is seen as an outcome of coding; allowing for new, unanticipated and un-obvious themes to develop through analysis of transcripts (Braun and Clarke, 2020).

Reflexive thematic analysis of this data will be conducted using the six phases suggested by Braun and Clarke (2020). First, the printed transcriptions will be read several times by the researcher to gain familiarity with the data and initial familiarization notes will be written. Second, systemic data coding will be applied to each transcript. Third, the initial themes will be generated from all collated and coded transcripts. Fourth, themes will be developed and reviewed; involving checked against the initial codes to ensure adequate matching. Fifth, further refinement of the potential themes will result in names of themes. The sixth phase will involve production of the report, which will involve selecting extracts from the data that captured the essence of participants' experiences and linking these extracts back to the themes that had emerged.

Section 6: Project Management / Timetable

Outline a timetable for completion of key stages of the project

E.g. ethics submission, start and end of data collection, data analysis

December 2020: Submit thesis proposal form
January 2021: Submit ethical approval and begin data collection and transcription
February 2021: Data collection and transcription
March 2021: Data analysis
April 2021: Draft of completed thesis, make changes and finalise
May 2021: Submit these

Section 7: Management of Risks to Project
Please summarise the main potential risks to your study, perceived likelihood of occurrence of these risks, and how you will respond to identified risks if they should occur (you do not need to repeat information provided in section 4).
With any research study, there is a risk that an insufficient number of participants will be recruited. There is a dependence on social contacts and colleagues of the lead researcher and also reliance on initial participants in the study being able to identify other potential participants. In response to this risk, the lead researcher will maintain frequent contact with colleagues and social contacts to raise and maintain the profile of this study in order to meet the target number of participants.

Section 8: Are the any potential costs for the project?
Outline any potential financial costs to the project and justify why these are necessary; including how costs will be met. Please separate these into potential costs for the University and potential costs for your NHS Board. You should ask your NHS Board to meet stationery, printing, postage and travel costs.
No potential costs have been identified as all data will be collected over email, phone or video calling.

Section 9: Confirmation of Supervisors' Approval	
"I confirm that both my Academic and ~~Clinical~~ Thesis Supervisors have seen and approved this research proposal and have both completed the supervisors' appraisal forms below." *Delete as appropriate*	
Yes	No

Appendix 1

Main Academic Supervisor's Appraisal of Project Risk

Supervisor's Name
Dr Suzanne O'Rourke

Date
18/12/20

Do you consider that the project should proceed in broadly its current form? *Delete as appropriate*		
Yes	Yes, subject to the revisions outlined below	No

Outline the reasons for the above response Highlight any areas of risk to the completion of the project that have not been fully addressed within the proposal and any steps that could be taken to reduce risks
I am pleased to support the proposal. As identified in Section 7, the primary risk, as with so many studies, is that an insufficient number of participants will be recruited. The candidate has reassured me of her contacts in this field and I am further reassured that the chosen method does not require large numbers of participants.

APPENDIX 3: Ethical Approval

University of Edinburgh, School of Health in Social Science
Research Ethics, Integrity and Governance

The forms required when seeking ethical approval in the School of Health and Social Sciences have now been merged into this single electronic document. The sections you are required to complete will depend on the nature of your application. Please start to complete the form from the beginning and proceed as guided. On completion the *entire* document should be submitted electronically to your section's ethics administrator using the email addresses detailed on the final page.

Applications submitted without appropriate documentation will be returned.

Please work your way through this form, reading the questions and accompanying information carefully. Sections highlighted in yellow are mandatory, so you must answer all the questions in these sections.

Aside from the mandatory questions you won't always need to answer all of the questions in the form. Section 1 "your project details" includes a set of filter questions that determine the rest of the questions you need to answer. Please read the notes carefully to make sure you answer the right questions. The notes contain hyperlinks so you can jump directly to the relevant section.

Sections highlighted in yellow are **mandatory**. These must be completed for every application.

Section 1: Introduction
Section 2: Your project details
Section 3: Description of the research
Section 4: Potential risks to participants and researchers
Section 5: Participants and data subjects
Section 6: Participants or data subject information and consent
Section 7: Confidentiality and handling
of data
Section 8: Security sensitive material
Section 9: Copyright
Section 10: Good conduct in collaborative research
Section 11: Good conduct in publication researc

SECTION 1: Introduction

This is a:

New application for ethical approval – first submission ☒

A resubmission following reviewer comments ☐

A resubmission with requested amendments ☐

Please select your School:

☒ School of Health in Social Science

Please select your subject area

☐ CPASS

☒ Clinical Psychology

☐ Nursing Studies

It is each researcher's responsibility to check whether their project requires Sponsorship, Caldicott Approval, R&D approval, and/or IRAS. https://www.ed.ac.uk/health/research/ethics/sponsorship-and-governance

If the project requires any of these, these need to be secured prior to submitting this application.

Please tick the relevant box before proceeding:

I have checked and this project does not require Sponsorship, Caldicott, R&D and/or IRAS approval ☒

My project requires Sponsorhip ☐ Sponsorship letter attached ☐

My project requires Caldicott approval ☐ Caldicott approval letter/e-mail attached ☐

My project requires R&D approval ☐ R&D approval letter/e-mail attached ☐

My project requires IRAS approval ☐ IRAS approval letter/e-mail attached ☐

External Research Ethics Approval

Does your research project require the approval of any other institution and/or ethics committee, nationally or internationally?

Please state the name of the review body and the current status of your application (for example, submitted, approved, deferred, or rejected)? Please include any known submission / approval timelines.

No

SECTION 2: Your project details

2.1 Project details

Your name: Susan Harris

Please enter your project title: Understanding legal professionals' experience of the assessment of fitness to plead
Proposed Project Start Date: 01/02/2021
Proposed Project End Date: 01/05/2021

Q1. Are you a member of staff or a student?
☐ Staff member
Supplementary questions for staff members only:
List the names and institutions of any Co-Investigators working with you on the project.

☒ Student
Supplementary questions for students only:
What type of student are you?
Postgraduate taught student

Please provide your course title or programme name
Doctorate in Clinical Psychology
Who is your supervisor?
Dr Suzanne O'Rourke (Research Supervisor)

Q2. Please indicate any external ethical guidance your project has to adhere to. For example, the British Psychological Society (BPS), the British Academy, the British Association of Sport and Exercise Sciences (BASES)

British Psychological Society

2.2 Participants

Q3. Will you be collecting or generating any new data (including autoethnographic writings)?

☒ Yes
☐ No

Q4. Will you be extracting, re-coding or using existing data that contains sensitive information (i.e., identifiable information)?

☒ Yes
☐ No

If the answers to both Q3 and Q4 are 'no' you are not required to complete:

Section 4: Potential risks to participants and researchers
Section 5: Participants and data subjects
Section 6: Participant or data subject information and consent

2.3 Security-Sensitive Material

Q5. Does your research project fit into any of the following security-sensitive categories?

☐ Your research project is commissioned by the military.

☐ Your research project is commissioned under an EU security cell.

☐ Your research project involves the acquisition of security clearances.

☐ Your research project concerns groups which may be construed as terrorist or extremist

If you answer 'yes' to any of the questions above you must complete Section 8 Security Sensitive Material. You must answer all questions in the section.

2.4 Good Conduct in Collaborative Research

Q6. Will your research project involve collaborative work?

☐ Yes

☒ No

Selecting "Yes" to this question means you must complete Section 10 "Good conduct in collaborative research" later in the form. You must answer all questions in the section.

2.5 Project Funding

Q7. Is funding required for your research project? (To be completed by staff only)
Please indicate how the project will be financially supported.

2.6 Knowledge Exchange and Impact

Q8. Will there be any knowledge exchange and impact activities associated with this project? (To be completed by staff only)

2.7 Consultancy Potential

Q9. Could your research project lead to potential consultancy activities in the future? (To be completed by staff only)

SECTION 3: Description of the research

Q10: Please use the box below to describe your research; including a background summary, rationale, research questions and hypotheses, methodology, procedures. If you have identified ethical considerations that are not addressed in other parts of the form, please outline and discuss them here.

The test of whether a person may be 'fit to plead' focuses upon the key questions of whether a defendant is able to understand the nature of the charge against them, the need to enter a plea to a charge and the consequences of such a plea, the purpose of a trial, their ability to instruct a legal representative and to follow the course of a trial. Conditions associated with significant cognitive impairment are common in forensic populations, such as traumatic brain injury (TBI), significant drug and alcohol use, along with other potential neurodevelopmental influences such as trauma (e.g. O'Rourke et al., 2020). Indeed, some studies suggest the prevalence of such conditions excess of 40% in forensic populations (e.g. Durand et al., 2017). Such conditions are associated with significant and wide-ranging cognitive impairments in, but not limited to, attention and memory; all of which have been associated with an individual's fitness to plead (White et al., 2014).

Startingly, a study in England and Wales found that only 66 defendants per year were found unfit to plead between 1997 and 2001 (Mackay et al., 2007). Indeed, one study indicated that of those found unfit to plead, the majority had passed through the criminal justice system normally in previous contacts (Grubin, 1991). Concerns around an individual's ability to engage in the above competencies must be raised by the individual's legal representative. These concerns require referral to, and evaluation by, an expert witness, who may be a clinical and other practitioner psychologist or psychiatrist. These expert witnesses provide expert evidence in such cases. The evaluation of an individual's fitness to plead involves interaction between legal and healthcare professionals (Peay, 2012); raising challenges of their intersecting skills, competencies and values.

Whilst the ultimate determination of FtP must be made by the court, it has been found to be highly influenced by the expert psychiatric or psychological witnesses (e.g., Zapf et al., 2004); highlighting these reports are among the most influential forms of forensic evaluation (Murrie and Zelle, 2015). Given that the court's decision will be informed by the report, rates of agreement between courts and expert witnesses have unsurprisingly been found to be high, (Zapf et al, 2004; Gowensmith et al., 2012); with rates of agreement found to exceed 90%. In the absence of best practice guidelines, the quality of such reports and evidence has been questioned (e.g., Robinson & Acklin, 2010). For example, research has highlighted that few expert witness assessments examine abilities that are essential if a defendant is to participate fully in proceedings such as a defendant's impulsiveness, their ability to inhibit verbal responses and their ability to remember, manipulate and consider information relevant to the consequences of their actions or decisions during their trial (e.g. Pirelli et al., 2011).

Whilst much commentary exists regarding the quality of such assessments including the absence of particular measures etc, little is known about the experience of legal professionals in this process. Legal professionals are tasked with the significant responsibility of identifying clients that may be at risk of unfitness to plead, then in referring them for expert witness evaluation if necessary. There is a dearth in the literature regarding their experience of this identification and referral process. In one qualitative study, Rogers et al. (2009) unsurprisingly found that criminal barristers had concerns about defendants 'slipping through the net' and were in agreement that the current threshold for unfitness to plead was too high. Since this study, the Law Commission (2016) released a report asserting that reform of the current system was required, and highlighted issues with the current process including the lack of

screening procedures for unfitness to plead and the erroneous continued focus on psychiatric disorder being the most significant contribution to unfitness to plead, rather than other cognitive deficits.

Furthermore, as mentioned, agreement between the courts and expert witnesses has consistently been reported at high levels, yet on occasion, courts do disagree and question the evidence of expert witnesses, and again, little is known about legal professionals' experience of this process specifically.

Against the backdrop laid out above, there is a need to undertake research that provides greater insight in this area and to explore the specific experiences of those involved in this process; including but not limited to, their experience of; identification and referral process, the commissioning of reports, the reports themselves and the expert on the stand. It will utilize reflexive thematic analysis to better understand legal professionals' experiences and importantly, help identify any potential barriers to identification of vulnerable defendants within the criminal justice system. Furthermore, increasing understanding around this process may help guide expert witnesses to produce reports of high quality. This project will help highlight any specific strengths, difficulties and barriers in the current process to ultimately improve the assessment process for defendants, victims, legal professionals and expert witnesses.

Primary research question:
Understanding legal professionals' experience of the assessment of fitness to plead

Secondary research questions:
What are legal professionals' experience of identifying vulnerable defendants that may be unfit to plead?
What are the strengths and weaknesses of the current assessment process?
What are legal professionals' experience of courts willingness to accept the opinion offered?

Method and Analysis

A qualitative study using semi structured interviews will be carried out. Data will be analysed using reflexive thematic analysis (RTA; Braun and Clarke., 2019). Reflexive thematic analysis of this data will be conducted using the six phases suggested by Braun and Clarke (2020). First, the printed transcriptions will be read several times by the researcher to gain familiarity with the data and initial familiarization notes will be written. Second, systemic data coding will be applied to each transcript. Third, the initial themes will be generated from all collated and coded transcripts. Fourth, themes will be developed and reviewed; involving checked against the initial codes to ensure adequate matching. Fifth, further refinement of the potential themes will result in names of themes. The sixth phase will involve production of the report, which will involve selecting extracts from the data that captured the essence of participants' experiences and linking these extracts back to the themes that had emerged.

Recruitment Procedure

Social contacts and colleagues of the research lead will be asked to distribute the Participant Information Sheet (PIS) to individuals they know to be legal professionals. Potential participants can then either contact the lead researcher directly or indeed, may provide their contact details (name, email, phone number) to their contact, who can then pass this on to the lead researcher to contact directly. It is expected, through the first recruited participants, snowball sampling may be utilised by those who have engaged in the study passing details to those they may know who may be interested in

participating. Similarly, these individuals can then either contact the lead researcher directly or pass their details on through participants.

The lead researcher will communicate by phone or email (depending on participant preference) to provide additional information on the study research questions and address other practical issues regarding participation in the study e.g. interview duration, methods of interview (phone or zoom). Demographic data will be discussed to ensure all inclusion criteria is met. If, following this initial contact, the participant is willing to participate in the study, a suitable time and date for an interview will be arranged with the participant.

A copy of the PIS and consent form will be emailed via a link to Qualtrics to the participant prior to the arranged interview. Before each interview begins, the lead researcher will reiterate the content of the PIS and consent form and check the participant has completed the Qualtrics consent form. Before the interview commences, a demographic form will be completed with each participant. Agreement regarding further contact between participant and lead researcher will also be agreed at this point, including sharing of the completed research paper. Inclusion criteria will be again checked at this point and upon being met, semi-structured interviews will be conducted.

Data Management

All interviews will be recorded on an encrypted and password protected device. Interviews conducted over video calling software will be recorded using the record function on the software where possible. Consent will be recorded on Qualtrics; an online survey platform supported by the University of Edinburgh.

All files (video and audio) will be stored using the secure SharePoint data storage location supported by the University of Edinburgh, which can be accessed only by the lead researcher and supervisor.

Following interviews, transcription of audio and video recordings and anonymisation will take place as soon as possible. Any identifiable information will be deleted at this point from transcripts. These anonymised transcripts will also be stored on Sharepoint prior to being uploaded to the online platform Nvivo for data analysis. Audio and video recordings will be deleted immediately after transcription.

SECTION 4: Potential risks to participants and researchers

Q11. Is your research project likely or possible to induce any psychological stress or discomfort in the participants or others, indirectly associated with the research?

☐ Yes
☒ No

If "yes" state the types of risk and what measures will be taken to deal with such problems

Q12. Does your research project require any physically-invasive or potentially physically harmful procedures?

☐ Yes
☒ No
If "yes" give details and outline procedures to be put in place to deal with potential problems.

Q13. Does your research project require the use of privacy-invasive technology, such as CCTV, biometrics, facial recognition, vehicle tracking software?

☐ Yes
☒ No

If "yes" - Give details and outline procedures to be put in place to deal with potential problems.

Q14. Does your research project involve the investigation of any illegal behaviour or activities?

☐ Yes
☒ No

If "yes" - Give details of any illegal behavior or activities you may investigate

Q15. Is it possible that your research project will lead to awareness or the disclosure of information about child abuse or neglect?

☐ Yes
☒ No

If "yes" - Indicate the likelihood of disclosure and the procedures to be followed if you become aware that a child has been or may be at risk of harm

Q16. Is it likely that dissemination of research findings or data could adversely affect participants or others indirectly associated with the research?

☐ Yes
☒ No

If "yes" - Describe the potential risk for participants/data subjects of this use of the data. Outline any steps that will be taken to protect participants.

Q17. Could participation in this research adversely affect participants and others associated with the research in any other way?

☐ Yes
☒ No

If "yes" - Describe the possible adverse effects and the procedures to be put in place to protect against them.

Q18. Is this research expected to benefit the participants, directly or indirectly?

☒ Yes
☐ No

If "yes" - Give details of how this research is expected to benefit the participants.

It is hoped that this project will provide greater insight into, and understanding of, the experience of legal professionals in the assessment of fitness to plead. Currently there is little research that has explored the experiences of legal professionals in this process. Legal professionals play a vital role in identifying vulnerable defendants for assessment, yet little is known about their experience, including their views on the process and any potential barriers they face regarding this. This study will provide a detailed insight into the experience of this group, and whilst the direct benefit to defendants may be limited, it is hoped that this study may enable us to better determine factors that may help improve the identification and assessment of vulnerable defendants within the legal system.

Q19. Will the true purpose of the research be concealed from the participants/data subjects?

☐ Yes
☒ No
If "yes" - Explain what information will be concealed and why.

Q20. Will participants/data subjects be debriefed at the conclusion of the study?

☒ Yes
☐ No
If "no" – Why will participants / data subjects not be debriefed?

Q21. At any stage in this research could researchers' safety be compromised, or could the research induce emotional distress in the researchers?

☐ Yes
☒ No

If "yes" - Give details and outline procedures to be put in place to deal with potential problems.

Please tick to confirm you agree with the following:

I will adhere to School guidance on risk assessment and health and safety and will seek advice on project and travel insurance prior to project commencement.

☒ I agree

☐ I do not agree

☐ Not applicable

SECTION 5: Participants and data subjects. For autoethnographic research also include those who may feature in your writings.

Q22. How many participants or data subjects are expected to be included in your research project?

Sample:
This study will aim to recruit approximately 15 participants.

Q23. What criteria will be used in deciding on the inclusion and exclusion of participants/data subjects in your research project?

Inclusion:
Legal professionals such as barristers, solicitors and/or judges
Practicing in the United Kingdom
Practicing in the field of criminal law
Professional experience of working on cases in which fitness to plead was assessed by expert witnesses
Able to speak and read English
Able to provide informed consent to participate

Exclusion:
Legal professionals with no professional experience of fitness to plead
Legal professionals working out with the area of criminal law
Legal professionals practicing outside of the United Kingdom

Q24. Are any of the participants or data subjects likely to be under 16 years of age?

☐ Yes
☒ No
If "yes" - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q25. Are any of the participants or data subjects likely to be children in the care of a Local Authority?

☐ Yes
☒ No
If "yes" - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q26. Are any of the participants or data subjects likely to be known to have additional support needs?

☐ Yes
☒ No
If "yes" - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q27. In the case of participants with additional support needs, will arrangements be made to ensure informed consent?

☐ **Yes**
☒ **No**
If "yes" – What arrangements will be made?
NA

If "no" – Please explain why not
It is unlikely that participants will have any additional support needs. In order to meet inclusion criteria for this study, participants must be legal professionals, which will mean they will have had a university level education.

Q28. Are any of the participants or data subjects likely to be physically or mentally ill?

☐ Yes
☒ No
If "yes" - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q29. Are any of the participants or data subjects likely to be vulnerable or likely exposed to harm in other ways?

☐ Yes
☒ No

If "yes" - Explain and describe the nature of the vulnerability and the measures that will be used to protect and/or inform participants/data subjects.

Q30. Are any of the participants or data subjects likely to be unable to communicate in the language in which the research is conducted

☐ Yes
☒ No
If “yes” - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q31. Are any of the participants or data subjects likely to be in a relationship (i.e., professional, student-teacher, other dependent relationship) with the researchers?

☒ Yes
☐ No
If “yes” - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.
It is possible that participants may know the lead researcher. They will not however have a dependent relationship with the lead researcher, as the lead researcher does not have a defendant relationship with anyone eligible to being included in the study. It will be emphasized to all participants that participation is entirely voluntary.

Q32. Are any of the participants or data subjects likely to have difficulty in reading and/or comprehending any printed material distributed as part of the study?

☐ Yes
☒ No
If “yes” - Explain and describe the measures that will be used to protect and/or inform participants/data subjects.

Q33. Describe how the sample will be recruited.

Social contacts and colleagues of the research lead will be asked to distribute the Participant Information Sheet (PIS) to individuals who they know to be legal professionals. Potential participants can then either contact the lead researcher directly or indeed, may provide their contact details (name, email, phone number) to their contact, who can then pass this on to the lead researcher to contact directly. It is expected, through the first recruited participants, snowball sampling may be utilised by those who have engaged in the study passing details to those they may know who may be interested in participating. Similarly, these individuals can then either contact the lead researcher directly or pass their details on through participants.

The lead researcher will communicate by phone or email (depending on participant preference) to provide additional information on the study research questions and address other practical issues regarding participation in the study e.g. interview duration, methods of interview (phone or skype). Demographic data will be discussed to ensure all inclusion criteria is met. If, following this initial contact, the participant is willing to participate in the study, a suitable time and date for an interview will be arranged with the participant.

A copy of the PIS and consent form will be emailed via a link to Qualtrics to the participant prior to the arranged interview. Before each interview begins, the lead researcher will reiterate the content of the PIS and consent form and check the participant has completed the Qualtrics consent form. Before the interview commences, a demographic form will be completed with each participant. Agreement regarding further contact between participant and lead researcher will also be agreed at this point, including sharing of the completed research paper. Inclusion criteria will be again checked at this point and upon being met, semi-structured interviews will be conducted.

Q34. Will participants receive any financial or other material benefits as a result of participation?

☐ Yes
☒ No
If "yes" - What benefits will be offered to participants and why?

Section 6: Participant or data subject information and consent

Q35. Will written consent be obtained from all participants or data subjects?

☐ Yes
☒ No

If "yes" – attach participant information sheet and consent form
If "no" – explain why not and how consent is obtained (e.g. orally), and/or if consent cannot or should not be sought for some reason, please provide a clear case and rationale for this

A copy of the PIS and consent form will be emailed via a link to Qualtrics to the participant prior to the arranged interview. Before each interview begins, the lead researcher will reiterate the content of the PIS and consent form and check the participant has completed the Qualtrics consent form. Before the interview commences, a demographic form will be completed with each participant. Agreement regarding further contact between participant and lead researcher will also be agreed at this point, including sharing of the completed research paper. Inclusion criteria will be again checked at this point and upon being met, semi-structured interviews will be conducted.

Q36. Have you made arrangements to tell participants what information you will hold about them and for how long?

☒ Yes
☐ No

If "yes" - what arrangements have been made?
Information collected from participants will be collected directly from the individual. Participants will be reminded that data will be held and the process of anonymization and storage will be discussed with each participant. Anonymised data may be held for up to 5 years, following which it will be destroyed.

Q37. Have you made arrangements to tell participants whether you will disclose the information to other organisations?

☐ Yes
☒ No
If "yes" - What arrangements have been made?

Q38. Have you made arrangements to tell participants whether you will combine that information with other data?

☒ Yes
☐ No

If "yes" - What arrangements have been made?

It will be clear in the PIS that anonymized data will be combined with other participant data for qualitative analysis. Once analysis of data begins, it is not possible to extract individual data. Therefore, all participants will be informed that they have one week to withdraw their data from the study, after which analysis will have begun and withdrawal will not be possible.

Q39. In the case of children participating in the research, will the consent or assent of parents be obtained?

☐ Yes
☐ No

If "yes" - Explain how this consent or assent will be obtained

NA

If "no" – Please explain why you won't be obtaining consent

Q40. Will the consent or assent of children participating in the research be obtained?

☐ Yes
☐ No

If "yes" - Explain how this consent or assent will be obtained

NA

If "no" – Please explain why not

Q41. In the case of participants who are not proficient in the language in which the research is conducted, will arrangements be made to ensure informed consent?

☐ Yes
☐ No

If "yes" – What arrangements will be made?

NA

If "no" – Please explain why not

Q42. Does the activity involve using cookies or tracking individual's activity on a website or the Internet in general?

☐ Yes
☐ No

If "yes" – Describe the arrangements, you have put in place to obtain informed consent for the use of these tools?

NA

SECTION 7: Confidentiality and handling of data

Q43. What information about participants/data subjects will you collect and/or use?

All participants will be asked to complete a demographic information sheet in order to profile participants and ensure eligibility. This study will utalise qualitative methods, and therefore semi structured interviews will be carried out. An interview schedule will be developed, relevant to the overarching research questions listed above. All questions will be open ended, with prompts given only if needed. Interview questions will include questions regarding the participants experience of the assessment of fitness to plead during their career, including any barriers they faced, experiences of agreeing and disagreeing with the assessment and factors that influenced their decision on whether to refer a defendant for assessment. Any identifying characteristics of the data will be anonymized prior to the final write of up this study. In the consent form, participants will be informed that the final article will include direct quotes from the interviews.

Q44. Will you collect or use NHS data?

☐ Yes
☒ No
If "yes" – what NHS data will you collect or use?

Q45. What training will staff who have access to the data receive on their responsibilities for its safe handling? Have all staff who have access completed the mandatory data protection training on the self-enrolment page of Learn?

Mandatory training on safe handling of information and data protected have been completed and only the lead researcher will be responsible for collection and safe handling of identifiable data. Supervisors will have access to anonymized transcripts in order to check analysis and theme development on Nvivo.

Q46. Will the information include special categories of personal data (health data, data relating to race or ethnicity, to political opinions or religious beliefs, trade union membership, criminal convictions, sexual orientations, genetic data and biometric data)

☒ Yes
☐ No
If "yes" – Explain what safeguards e.g. technical or organisational you have in place; including any detailed protocols if this requires special and/or external processing, storage, and analysis.

Personal data collected will be processed and stored in accordance with the General Data Protection Act (2018). Interviews will be recorded using password protected voice recorder and stored on a password protected laptop. This data will then be stored on the lead researchers Sharepoint account during the

transcription process. All identifiable information will be removed at the point of transcription and only the lead researcher and supervisor will have access to these files. Anonymised trancripts will be uploaded to Nvivo for data analysis. Consent will stored separately from interview transcripts following completion on Qualtrics; recordings will be stored on a University of Edinburgh sharepoint account. Confidentiality procedures will be clearly communicated to participants through the PIS and consent form.

If you answered “no” to this question, please skip Q56 and continue answering the rest of the questions..

Q47. Please indicate how your research is in the public interest:

☐ Your research is proportionate

☒ Your research is subject to a governance framework

☐ Research Ethics Committee (REC) review (does not have to be a European REC)

☐ Peer review from a funder

☐ Confidentiality Advisory Group (CAG) recommendation for support in England and Wales or support by the Public Benefit and Privacy Panel (PBPP) for Health and Social Care in Scotland

☐ Other

Q48. It is essential that you identify, and list all risks to the privacy of research participants. You will then need to consider the likelihood of the risks actually manifesting and the severity of harm if the risks actually manifest.

Risk	**Likelihood of risk manifesting**			**Severity of harm**		
	Remote	**Possible**	**Probable**	**Minimal**	**Significant**	**Severe**
Identifiable due to data linkage	X	□	□	X		□
Identifiable due to low participant numbers	X	□	□	X	□	□
Identifiable due to geographical location	X	□	□	X	□	□
Identifiable due to transfer of data	□	□	□	□	□	□
Identifiable due to access of data	□	□	□	□	□	□
Insert more rows as appropriate	□	□	□	□	□	□

Please use this text box to record any other risks and the likelihood of them occurring, along with the severity of harm.

Data Management

All interviews will be recorded on an encrypted and password protected device. Interviews conducted over video calling software will be recorded using the record function on the software where possible. Consent will be recorded on Qualtrics; an online survey platform supported by the University of Edinburgh.

All files (video and audio) will be stored using the secure SharePoint data storage location supported by the University of Edinburgh, which can be accessed only by the lead researcher and supervisor.

Following interviews, transcription of audio and video recordings and anonymisation will take place as soon as possible. Any identifiable information will be deleted at this point from transcripts. These anonymised transcripts will also be stored on Sharepoint prior to being uploaded to the online platform Nvivo for data analysis. Audio and video recordings will be deleted immediately after transcription.

Please identify measures you could take to reduce or eliminate risks identified as possible/significant or probable/severe.

Q49. Will information containing personal, identifiable data be transferred to, shared with, supported by, or otherwise available to third parties outside the University?

☐ Yes
☒ No

If "yes" - Please explain why this necessary and how the transfer of the information will be made secure. If the third party is based outside the European Economic Area please obtain guidance from the Data Protection Officer.

Q50. Other than the use by third parties, will the data be used, accessed or stored away from University premises?

☒ Yes
☐ No

If "yes" - Describe the arrangements you have put in place to safeguard the data from accidental or deliberate access, amendment or deletion when it is not on University premises, including when it is in transit, and (where applicable) it is transferred outside the EEA.

Data will be stored on a password protected laptop and in a Sharepoint account which can be accessed only by the researchers. Consent will be obtained on the Qualtrics software. Anonymised transcripts will be uploaded to Nvivo.

Q51. Will feedback of findings be given to your research project participants or data subjects?

☒ Yes

☐ No

If "yes" - How and when will this feedback be provided?

During the consent process, participants will be asked to indicate if they wish to receive a copy of the final report, and how they wish for this to be sent.

If "no" - Please provide rationale for this.

Q52. How do you intend to use/disseminate the results of your research project?

A research article with findings from this study will be submitted to a journal e.g. the Journal of Forensic Mental Health. The study will be written in a thesis format in part fulfillment of the lead researcher's doctorate in Clinical Psychology at the University of Edinburgh. This thesis will be made available in the University of Edinburgh Thesis Library.

SECTION 8: Security-sensitive material

The Terrorism Act (2006) outlaws the dissemination of records, statements and other documents that can be interpreted as promoting or endorsing terrorist acts.

Q53. Does your research involve the storage on a computer of any such records, statements or other documents?

☐ Yes
☐ No
If "yes" - Please tick 'Yes' to indicate that you agree to store all documents on that file store

Q54. Might your research involve the electronic transmission (for example, as an email attachment) of such records or statements?

☐ Yes
☐ No
If "yes" - Please tick 'Yes' to indicate that you agree not to transmit electronically to any third party documents stored in the file store

Q55. Will your research involve visits to websites that might be associated with extreme, or terrorist, organisations?

☐ Yes
☐ No
If "yes" - You are advised that such sites may be subject to surveillance by the police. Accessing those sites from University IP addresses might lead to police enquiries. Please acknowledge that you understand this risk by ticking 'Yes'

☐ Yes
☐ No
By submitting to the ethics process, you accept that your School Research Ethics Officer and the convenor of the University's Compliance Group will have access to a list of titles of documents (but not the contents of documents) in your document store. Please acknowledge that you accept this by ticking 'Yes'

Please confirm that you have contacted your School Research Ethics Officer to discuss security-sensitive material by ticking 'Yes'

☐ Yes, I have contacted my School's Research Ethics Officer
☐ No, I have not contacted my School's Research Ethics Officer

Section 9: Copyright

Q56. Does your project require use of copyrighted material?

☐ Yes
☐ No

If "yes" please give further details

Section 10: Good conduct in collaborative research

Q57. Does your project involve working collaboratively with other academic partners?

☐ Yes
☒ No

If "yes" - Is there a formal agreement in place regarding a collaborative relationship with the academic partner(s)?

If "no" - Please explain why there is no formal agreement in place?

Q58. Does your project involve working collaboratively with other non-academic partners?

☐ Yes
☒ No

If "yes" - Is there a formal agreement in place regarding a collaborative relationship with the non-academic partner(s)?

If "no" - Please explain why there is no formal agreement in place.

Q59. Does your project involve employing local field assistants (including guides/translators)?

☐ Yes
☒ No

If "yes" - Is there a formal agreement in place regarding the employment of local field assistants (including guides and translators)?

If "no" - Please explain why there is no formal agreement in place

Q60. Will care be taken to ensure that all individuals involved in implementing the research adhere to the ethical and research integrity standards set by the University of Edinburgh?

☒ Yes
☐ No

If "no" - Please explain why care will not be taken

Q61. Have you reached agreement relating to intellectual property?

☒ Yes
☐ No

If "no" - Please explain why you have not reached agreement

Section 11: Good conduct in publication practice

In publication and authorship, as in all other aspects of research, researchers are expected to follow the University's guidance on integrity.
By ticking yes, you confirm that full consideration of the items described in this section will be addressed as applicable

☒ Yes
☐ No

Subsequent to submission of this form, **both the applicant and their supervisor should review any alterations in the proposed methodology of the project.** If the change to methodology results in a change to any answer on the form, then a resubmission to the Ethics subgroup is **required.**

The principal investigator is responsible for ensuring compliance with any additional ethical requirements that might apply, and/or for compliance with any additional requirements for review by external bodies.

ALL forms should be submitted in electronic format. Digital signatures or scanned in originals are acceptable. The applicant should keep a copy of all forms for inclusion in their thesis.

Susan Harris	Susan Harris	26/01/2021
Applicant's Name	Applicant's Signature	Date signed

	Suzanne O'Rourke	29/01/21
*Supervisor Signature[1]	Supervisor Name	Date

*NOTE to Supervisor: Ethical review will be based only on the information contained in this form. If countersigning this check-list as truly warranting all 'No' answers, you are taking responsibility, on behalf of the HSS and UoE, that the research proposed truly poses no ethical risks.

ISSUES ARISING FROM THE PROPOSAL

[1] Not required for staff applications

Reviewer comments 8.3.21
Q10.
Says that the researcher will contact participants that they know meet the inclusion criteria. How do they know that people meet the inclusion criteria of the study?

It sounds like the researcher will be contacting the participant to ask demographics and ensure inclusion criteria is met before sending a copy of the participant info sheet and consent. The researcher should not be contacting participants or collecting any demographic information until the participant has sight of the information sheet and then consented. This is in contradiction to Q33 where it says that social contacts of lead researcher will be contacted then the lead researcher will share the participant info sheet. Need a bit more clarity on recruitment and consent.

What will happen to participants email addresses? This can be identifiable. This needs to be noted in the PIS also.

Q27: This is just an observation. The candidate stated that it was unlikely that the participants had any additional support needs, because the 'participants must be legal professionals, which will mean they will have had a university level education'. Having an university level education does not mean that a person does not have additional support needs (see UK's higher education institutions' move to widening participation over the last decade).

In the proposal, it is stated that the interviews will be recorded with an encrypted recorder. In the participant information sheet, it is stated that it may also be recorded with the video recording function (i.e. zoom, and skype are noted). How this affects data storage should be considered in the proposal. For instance, in teams recordings are shared with participants after the meeting has taken place.

Q48
You are collecting personally identifiable data i.e. audio and (sometimes) video recordings of participants. Needed to state here how this will be organized and dealt with i.e. when will these recordings be deleted (although I see it mentioned in the participant info sheet). Also what about identifiable data that may be mentioned in the transcript? How will this be dealt with?

PIS
Need to have the lead researcher's name and supervisor's name here.
See above regarding email addresses this needs to be explained in PIS.

The PIS states that the information will be treated confidentially unless the participant discloses anything that could harm them or someone else, in which case the researcher would need to talk to someone. I understand that this is a very remote risk, but if this is mentioned in the PIS, it should also have been highlighted in the proposal.

PIS should also include information about how long the non-identifiable data will be kept.

PIS states at the beginning that participation is voluntary, and that participants can withdraw at any time. Later on in the document, it is stated that they can only withdraw until 7 days after the interview. This is slightly contradictory and needs to be made clearer to the participant.

Consent
This looks like it requires a signature however in the application you mention qualtrics where they will need to click to consent. Can you clarify how consent will be obtained?

The consent sheet states: *I understand non-critical details may be altered to protect my anonymity, where that would not alter the meaning or undermine the study.*

Does this mean that if the meaning would be altered or the study would be undermined that details may not be changed and thus anonymity would not maintained? Or does it mean that such information would not be included in the analysis/write-up. This is not quite clear here.
In line with advice above, it is stated that the participant can withdraw at any time, however, this is not the case as they cannot withdraw after 7 days after the interview. This needs to be made clearer.

Debrief sheet:
The proposal states that participants will be debriefed at the end of the study, but no debrief sheet is included. I assume that verbal debriefing will take place. It is normally good practice to include some sources of support after a study in case participants do, however unlikely in this case, experience mild distress. This also links to the point in the PIS form about harm to others or the participants. How are participants supplied with this support information?

The applicant should respond to these comments in section below.

Signature: Position: Ethics and Integrity Lead

Date: 8.3.21

APPLICANT'S RESPONSE (If required)

Please see below responses to all highlighted issues below:

Q10.
Says that the researcher will contact participants that they know meet the inclusion criteria. How do they know that people meet the inclusion criteria of the study?

It sounds like the researcher will be contacting the participant to ask demographics and ensure inclusion criteria is met before sending a copy of the participant info sheet and consent. The researcher should not be contacting participants or collecting any demographic information until the participant has sight of the information sheet and then consented. This is in contradiction to Q33 where it says that social contacts of lead researcher will be contacted then the lead researcher will share the participant info sheet. Need a bit more clarity on recruitment and consent.
No contact has yet been made with any legal professional prior to ethics being approved.
Q10 and Q33 been changed so the information sheet will be distributed initially through social contacts to *known* legal professionals prior to any contact by the lead researcher. Once the PIS has been reviewed by potential participants, contact will be made to confirm participants meet inclusion criteria. At this point, the consent form will be sent to potential participants and upon completion, a suitable time for the interview will be arranged. It is anticipated that following this, the PIS will be distributed by participants through snowball sampling.

What will happen to participants email addresses? This can be identifiable. This needs to be noted in the PIS also.
PIS updated: *'All email correspondence will be deleted following participation in the interview. Your email address will be stored securely and separately from your interview responses, should you wish for a copy of the final report to be shared with you; otherwise, your email address will be deleted following completion of the interview.'*

In the proposal, it is stated that the interviews will be recorded with an encrypted recorder. In the participant information sheet, it is stated that it may also be recorded with the video recording function (i.e. zoom, and skype are noted). How this affects data storage should be considered in the proposal. For instance, in teams recordings are shared with participants after the meeting has taken place.
Interviews will be video recorded on Zoom video calling platforms only; these platforms allow the host only (lead researcher with admin rights) to receive a copy of the recording, these will be saved directly to the Sharepoint platform supported by the University of Edinburgh.

Q48
You are collecting personally identifiable data i.e. audio and (sometimes) video recordings of participants. Needed to state here how this will be organized and dealt with i.e. when will these recordings be deleted (although I see it mentioned in the participant info sheet). Also what about identifiable data that may be mentioned in the transcript? How will this be dealt with?
Q48 has been updated accordingly. Recordings will be deleted immediately after transcription. *'Following interviews, transcription of audio and video recordings and anonymisation will take place as soon as possible. Any identifiable information will be deleted at this point from transcripts.'*

PIS
Need to have the lead researcher's name and supervisor's name here.
See above regarding email addresses this needs to be explained in PIS.
Lead researcher and supervisor's name and email has been added to PIS

The following has been added to the PIS: *'All email correspondence will be deleted following participation in the interview. Your email address will be stored securely should you wish for a copy of the final report to be shared with you; otherwise, your email address will be deleted'*

The PIS states that the information will be treated confidentially unless the participant discloses anything that could harm them or someone else, in which case the researcher would need to talk to someone. I understand that this is a very remote risk, but if this is mentioned in the PIS, it should also have been highlighted in the proposal.
This statement has been removed from the PIS. This is not understood to be a risk in this project as participants will be speaking about their professional experience.

PIS should also include information about how long the non-identifiable data will be kept.
Information present in PIS states: *'Anonymised data will be stored for a minimum of 5 years and may be used in future ethically approved research.'*

PIS states at the beginning that participation is voluntary, and that participants can withdraw at any time. Later on in the document, it is stated that they can only withdraw until 7 days after the interview. This is slightly contradictory and needs to be made clearer to the participant.
PIS has been updated to the following statement: *'Your participation in this study is entirely voluntary and you are free to withdraw from participation up to 7 days after the interview, without giving a reason.'*

Consent
This looks like it requires a signature however in the application you mention qualtrics where they will need to click to consent. Can you clarify how consent will be obtained?
Consent will be obtaining through completion of the Qualtrics form only. Participants will be directed to click to confirm consent in lieu of a traditional signature.

The consent sheet states: *I understand non-critical details may be altered to protect my anonymity, where that would not alter the meaning or undermine the study.*

Does this mean that if the meaning would be altered or the study would be undermined that details may not be changed and thus anonymity would not maintained? Or does it mean that such information would not be included in the analysis/write-up. This is not quite clear here.
This item has been reworked to clarify on the consent form: ' I agree that anonymised quotes from my interview can be used in the final report and any potential publications.'

In line with advice above, it is stated that the participant can withdraw at any time, however, this is not the case as they cannot withdraw after 7 days after the interview. This needs to be made clearer.
Consent form has been altered to include that the participant can withdraw at any time up until 7 days after their interview.

Debrief sheet:
The proposal states that participants will be debriefed at the end of the study, but no debrief sheet is included. I assume that verbal debriefing will take place. It is normally good practice to include some sources of support after a study in case participants do, however unlikely in this case, experience mild distress. This also links to the point in the PIS form about harm to others or the participants. How are participants supplied with this support information?
It is thought highly unlikely that participant will experience distress following completion of the interview. During the verbal debriefing, participants will be asked if they require any additional support, at which time suitable numbers to call and resources will be provided (Samaritans and Breathing Space Scotland).

Signature: Susan Harris

Date: 10/03/2021

CONCLUSION TO ETHICAL REVIEW (if required)

The applicant's response to our request for further clarification or amendments has now satisfied the requirements for ethical practice and the application has therefore been approved.

Signature:

Position: Ethics and Integrity Lead

Date: 16.3.21

AMENDMENT/S: REQUEST FOR APPROVAL
Signatures: Date:
CONCLUSION TO ETHICAL REVIEW OF AMENDMENT
The applicant's response to our request for further clarification or amendments has now satisfied the requirements for ethical practice and the application has therefore been approved. Signature: Position: Date:

Acronyms / Terms Used
NHS: National Health Service
SHSS: School of Health in Social Science
IRAS: Integrated Research Applications System
Section: The SHSS is divided into Sections or subject areas, these are; Nursing Studies, Clinical Psychology, C-PASS.

Ethics Administrators

Nursing Studies: nursing@ed.ac.uk

Counselling, Psychotherapy and Applied Social Science: CPASS.ethics@ed.ac.uk

Clinical Psychology: Submitting.Ethics@ed.ac.uk

MA in Health, Science and Society:

APPENDIX 4: Participant Information Sheet

THE UNIVERSITY of EDINBURGH

Understanding legal professionals' experience of the assessment of fitness to plead: Participant Information Sheet

Participant Information

Thank you for taking time to look at this information sheet.
Before you decide whether to take part in this study, please review the information below.

The purpose of this study is to understand legal professionals' experience of the assessment of fitness to plead by expert witnesses in the United Kingdom. We hope that by gaining a greater understanding of your experiences, this will ultimately benefit other legal professionals, along with expert witnesses, to highlight both the strengths and challenges of the current process.

In order to meet inclusion criteria, you must be a legal professional (e.g. solicitor, barrister, judge) who is, or has worked in the UK, with professional experience of the assessment of fitness to plead in criminal cases. You must be able to speak and read English. Unfortunately people who, for any reason, are unable to provide informed consent will not be able to take part.

Your participation in this study is entirely voluntary and you are free to withdraw from participation up to 7 days after the interview, without giving a reason.

If you decide to take part

If you are willing to participate in this study, I will ask you to provide your consent using an online form. You will also be asked for some demographic information. If you are eligible to take part in the study you will be asked to participate in an interview lasting approximately one hour, where I will ask you about your professional experiences of the assessment of fitness to plead. The interview will be conducted either via telephone or online video calling software, according to your preference. I will record your responses using the record function on the video calling software and/or an audio recorder. You can take a break/s at any time during the interview or you can stop the interview at any time.

On completion of the interview, I will transcribe the content and any personal identifiable information will be removed from the transcripts. Once transcription is complete the audio recording of the interview will be destroyed. Analysis of your data will not begin until 7 days after the interview in which your data will be combined with other participant data for qualitative analysis. You will have up to 7 days after the interview to withdraw your data; after which it may not be possible for it to be removed. All email correspondence will be deleted following participation in the interview. Your email address will be stored securely and separately from your interview responses, should you wish for a copy of the final report to be shared with you; otherwise, your email address will be deleted following completion of the interview.'

Results of the research study

The study will be written up as a doctoral thesis and will be available on the University of Edinburgh's Thesis Library. You will not be identifiable in any published results. Direct quotations from the interview may be included in the final research report. Findings of the study may also be published in a scientific

journal or presented at relevant conferences. Anonymised data will be stored for a minimum of 5 years and may be used in future ethically approved research.

Confidentiality

The information we gather will be kept confidential and there are strict laws which safeguard your privacy at each stage of the process.

Following the transcription process, all interview recordings will be destroyed. Your data will only be viewed by the research team and all electronic data will be stored on a password-protected computer file. Your contact information, demographic responses and interview will all be kept separately from each other in order to minimise risk of data breach. All email correspondence will be deleted and the history of the interview on Skype or Zoom will be erased so that your personal correspondence will not be accessible following completion of the interviews. Please consult relevant privacy and security policies prior to interview to ensure you are comfortable in using these as methods of communication.

We will be using information from you in order to undertake this study and will act as the data controller for this study. This means that we are responsible for looking after your information and using it properly. The University of Edinburgh will keep identifiable information about you for 12 months after the study has finished.

For general information about how we use your data go to:
https://www.ed.ac.uk/records-management/privacy-notice-research

Organisation, funding and study review

The study has been reviewed by the Clinical Psychology Department, Ethics Review Committee at School of Health in Social Science at the University of Edinburgh.
To discuss this study with someone independent of the study team please contact: Dr Clara Calia, University of Edinburgh by email: or phone: 0131 651 3762

If you wish to make a complaint about the study please contact:

The Research Governance Team: cahss.res.ethics@ed.ac.uk or the Head of School in Health in Social Science: Professor Matthias Schwannauer m.schwannauer@ed.ac.uk

Lead Researcher:

Susan Harris (Trainee Clinical Psychologist)
s1895223@ed.ac.uk

Research Supervisor:

Dr Suzanne O'Rourke (Senior Lecturer, University of Edinburgh)

APPENDIX 5: Consent Form

University of Edinburgh
School of Health in Social Science
Medical School (Doorway 6)
Teviot Place
EH8 9AG

Participant Consent Form
V2 09/03/21:

Participant identification ID ☐

Study: Understanding legal professionals' experience of the assessment of Fitness to Plead

Investigator: Susan Harris (Trainee Clinical Psychologist, University of Edinburgh)

Please Initial box

1. I confirm that I have heard/read and understood the information sheet (V2 09/03/21) for the above study and have had the opportunity to consider the information and ask questions. ☐

I understand that my participation is voluntary and that I am free to withdraw up to 7 days after the interview, without giving any reason, ☐

I agree to my interview being audio recorded and if using video calling software, to the interview being both visually and audio recorded ☐

I understand that data will be used in a written report and might be published in scientific journals which may be disseminated to the wider research community with my details anonymised ☐

I agree that anonymised quotes from my interview can be used in the final report and any potential publications. ☐

I understand that my anonymised data will be stored for a minimum of 5 years and may be used in future ethically approved research. ☐

I agree to take part in the above study. ☐

_____ _____ _____
Name of Participant Date Signature

_____	_____	_____
Name of Person taking consent	Date	Signature

I wish to be informed of the study findings upon completion. ☐
Preferred method of receiving this (email or post) and contact details
……

APPENDIX 6: Demographic Questionnaire

Understanding legal professionals' experience of the assessment of fitness to plead: Demographic Form

Participant no:

Age Range:
20 – 29
30 – 39
40 – 49
50 – 59
60 – 69
70 – 79
80 – 89

Current/most recent position held (n of years held):

Previous positions held:

Approximate FtP cases in professional experience:

Location of work:
Northern Ireland
Scotland
England
Wales

APPENDIX 7: Interview schedule

Research Aim	Interview questions
Understanding legal professionals' experience of fitness to plead	What is your experience of identification of defendants that may be unfit to plead?
	What, if any, are the barriers to identification and assessment of vulnerable defendants?
	What are some factors that influence the decision to seek an assessment by an expert witness?
	What, in your opinion, are the strengths and weaknesses of the current process of identifying those who require an assessment?
	What is your experience of courts willingness to accept the opinion offered? (Experiences of agreement and disagreement between courts and expert witnesses)

APPENDIX 8: Transcription Excerpt; example of coding and theme generation

Data	Codes	Potential Themes
INTERVIEWER: I suppose that was... leads us on nicely to my next question about what your opinion is on what, if any, are the barriers to identifying vulnerable defendants that might be unfit to plead?		
P6: I think first of all identifying the people that it might be, which we just discussed. I think it can sometimes be difficult to work out what kind of expert you need (pause) whether you need a psychiatrist or a psychologist or a neurologist. Because you might know there's something not right, but you don't quite know what it is. I think there's a barrier in that I think some professionals take a view of fitness to plead that's lacking in nuance. I'm trying to think how to put that diplomatically. So for example, I mean some of those things are obvious, you know, do you know the definition guilty and not guilty? Do you know what a trial is? Do you know who your lawyer is? You know, those kinds of things. Do you understand the charge? But when you get into... I don't think experts necessarily take enough account of the sophisticated decision making that's required to give instructions and follow a trial and give evidence if you want to. So recently I was having a discussion with some psychiatrists about a client who is in X and incredibly unwell, and there were contradictory opinions as to whether they were fit to plead. As between the psychiatrist that I instructed in the psychiatrist the Crown instructed, who was their treating psychiatrist.	Identifying/knowing the signs Choosing the right expert Feeling there may be something wrong Facing barriers Expert witness not understanding? Obvious signs Uncovering more subtle signs Experts understanding legal matters Agreement/disagreement with the expert Conflicting opinions Disagreement between experts	Knowing what to look for Getting a feeling It's not always obvious signs Coming to an agreement