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When the accused can't stand trial?

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07 February 2019

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What happens when an accused cannot stand trial in criminal investigations? There are many situations whereby after a criminal investigation has started, an accused individual can no longer stand trial. For example, that person may pass away, may fall ill or may simply lack the capacity to be able to stand trial.

Many of these criminal matters can be linked to corresponding civil claims and it is important that prospective defendants and insurers alike are aware of the consequences that this may have on proof of allegations.

The most common examples of these situations are often in historical abuse allegations. By the nature of those cases, those who are accused can often be frail or elderly but this is a situation which can arise in any criminal matter. For example, you may have an employee being investigated for gross negligence manslaughter.

An individual has the right to a fair trial and on that basis, a guilty verdict and conviction cannot be held against them in the absence of their evidence. However, the court can elect to hear a trial of facts.

A trial of facts has, generally speaking, been a relatively unusual course of action but the most high profile case in which it has been tabled was in respect of the allegations of abuse tendered against Lord Greville Janner. That trial did not ultimately go ahead but was proposed on the basis of his advanced dementia.

Recently it was reported that a former youth football coach accused of sexual abuse died on the day that his trial was due to start. Given the evidence that had already been gathered to take this matter to trial, those involved must surely now be thinking of a trial of facts.

What is the outcome of a trial of facts?

Generally speaking, at a trial of facts, the jury will have to decide whether the individual alleged of criminal wrongdoing is either:

- not guilty, or
- did the acts alleged.

This is very different to a guilty verdict and an individual who is found to have done the acts alleged will not be sentenced to prison. The options that would be open to a judge would include:

- If there is sufficient medical evidence to detain the individual on the grounds of a mental disorder, a hospital order for admission to hospital can be made.
- A restriction order could be made to then prevent the discharge, transfer or leave of absence of the individual from that hospital without the Secretary of State's agreement.
- A supervision order could be made which would require the individual be monitored by a social worker or probation worker for a period of up to two years. Such an order may include a requirement to submit to treatment.
- An absolute discharge.

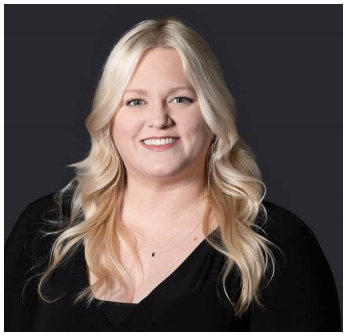
If the health of an individual improves in the meantime, a judge can arrange for them to be arraigned and to stand trial.

How should we treat a trial of facts in a related civil claim?

In practical terms it is our experience that if someone has been found to have ‘done the acts alleged’ in a trial of facts, this will be as persuasive as a guilty verdict when it comes to considering a civil claim.

The simple reason for this is the different standards of the burden of proof in civil and criminal matters. If a jury was satisfied, beyond reasonable doubt, that someone has committed the acts alleged regardless of their evidence, it would be an unlikely case where those acts would not be proven under the civil standard of balance of probabilities.

Contact



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