IN THE CENTRAL CRIMINAL COURT

REX

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SALEM SALEM

FITNESS TO PLEAD/STAND TRIAL

Criminal Procedure (Insanity) Act 1964, s.4

Introduction

1.1 The defendant, Salem Michel Salem is charged with offences of the utmost gravity. The question presently before the Court is not his guilt or innocence. It is whether, by reason of disability, he is fit to plead to the indictment and stand trial.

1.2 The issue arises pursuant to s.4 Criminal Procedure (Insanity) Act 1964. The Court has received evidence from four medical experts: Dr Richard Latham, Consultant Forensic Psychiatrist; Dr Norman Poole, Consultant Neuropsychiatrist; Professor Suresh Chhetri, Consultant Neurologist; and Dr Matthew Jackson, the defendant's treating Consultant Neurologist. All conclude that the defendant is unfit to plead and stand trial. The prosecution and defence are agreed that the defendant lacks fitness to plead. No party seeks to challenge any element of the expert evidence. I have been invited to determine the issue without hearing evidence.

The Charges and the Prosecution Case

1.3 The defendant faces seven counts. Counts 1, 2 and 4 allege murder as a crime against humanity contrary to s.51 International Criminal Court Act 2001. Count 3 alleges conduct ancillary to murder as a crime against humanity contrary to s.52 of that Act. Counts 5, 6 and 7 allege torture contrary to s.134 Criminal Justice Act 1988. The charges arise from events in Damascus, Syria, during 2011 and 2012, when the defendant was allegedly a colonel within Syrian Air Force Intelligence. The

prosecution represents the first time charges of murder as crimes against humanity under the International Criminal Court Act 2001 have been brought in this jurisdiction.

1.4 The Crown's case is that the defendant commanded or led Information Branch officers involved in the violent suppression of civilian demonstrations in Jobar, Damascus, and that he either ordered, participated in, or was criminally responsible for murders committed during those events. The prosecution further alleges that he participated in or was responsible for the torture of detainees held by Syrian security authorities.

1.5 The defendant has historically denied the allegations. In written responses provided during the investigation, he accepted that he was a colonel in the Information Branch but denied involvement in the killings, demonstrations, detention or torture alleged by the prosecution.

Procedural History

1.6 The defendant was arrested in December 2021 and remained under investigation for a substantial period. During 2022 the Metropolitan Police obtained expert reports from Dr Poole and Professor Chhetri addressing the consequences of the defendant's motor neurone disease. At that time both experts recognised severe physical disability, communication impairment and some evidence of executive dysfunction, but neither concluded that the defendant lacked the cognitive capacity necessary to understand proceedings. Professor Chhetri recommended further neuropsychological evaluation and Dr Poole considered the defendant fit to participate provided accommodations could be made.

1.7 On 10 March 2026 the defendant was sent for trial to the Central Criminal Court. At the preliminary hearing before me on 13 March 2026 the defendant indicated not guilty pleas to all counts and directions were given for the service of medical evidence. Arraignment did not take place. A time-estimate for trial of two to three months was agreed, and I directed that the trial will be allocated to a High Court Judge. Among the directions was service of the prosecution case by 24 April 2026, service of a defence statement by 10 July, service of medical evidence in May and a case management hearing to take place today, 3 July. A provisional trial date of 5 October 2027 was indicated. After the hearing a possible trial date of 11 January 2027 at Winchester Crown Court was identified although the prosecution indicated it could be ready earlier and the defence wanted longer.

1.8 Defence expert reports were served in May 2026. The prosecution thereafter obtained updated reports from Dr Poole and Professor

Chhetri. By the time of the hearing on 3 July 2026 all four experts had concluded that because of progression of the defendant's disease he was no longer fit to plead or stand trial.

The Legal Principles

1.9 The applicable principles remain those derived from R v Pritchard (1836) 7 Car. & P. 303 and subsequently explained in many authorities. There is no dispute. The question is whether the defendant is under such disability that he cannot effectively participate in the proceedings. Relevant considerations include whether he can:

a. understand the charges;

b. decide whether to plead guilty or not guilty;

c. exercise the right to challenge jurors;

d. instruct legal representatives;

e. follow the course of the proceedings; and

f. give evidence in his own defence if he wishes.

1.10 The issue is not whether participation would be difficult or inconvenient. Nor is the issue whether accommodations could improve participation. After all such matters have been explored, the issue is whether the defendant can participate effectively such that the trial would be fair. Where there is a dispute the burden lies upon the party asserting unfitness. The Court must determine the matter on the balance of probabilities.

The Medical Evidence

Dr Richard Latham, Consultant Forensic Psychiatrist

1.11 Dr Latham assessed the defendant on 10 May 2026 and described communication difficulties that were profound. He observed that the defendant could barely be understood and that only isolated words could be communicated reliably. The defendant told him he was not sure he understood the charges. He stated that he would do whatever his lawyer advised and did not think he could give evidence.

1.12 Dr Latham concluded: “Mr Salem’s communication means it is not feasible for him to provide instructions or give evidence in his own defence.” His ultimate opinion was: “At my assessment, therefore, I found that he was unfit to plead and stand trial.” And “even in the absence of cognitive impairment, communication

limitations alone would render meaningful participation in a three-month criminal trial unrealistic."

1.13 Although Dr Latham considered that the defendant could probably understand the broad nature of the charges and perhaps challenge a juror, he concluded that meaningful participation in a lengthy criminal trial was unrealistic because he could neither provide instructions nor give evidence.

Dr Norman Poole, Consultant Neuropsychiatrist

1.14 Dr Poole examined the defendant in June 2026 and compared his presentation with that observed in 2022. He found marked deterioration in both physical and cognitive functioning. During interview the defendant was unable to explain the allegations against him, could not identify victims, could not remember details of the proceedings, and responded that he would follow whatever his solicitor advised.

1.15 Cognitive testing produced an ECAS score of 18/136. Dr Poole identified significant memory impairment, executive dysfunction and apathy. His principal conclusion was: "Mr Salem is no longer fit to enter a plea to the offences charged." And "Mr Salem is not fit to stand trial."

1.16 Dr Poole explained that the defendant's communication difficulties were now "profound", that he would be unable meaningfully to instruct solicitors or give evidence and that his memory and executive deficits prevented him from retaining information long enough to make decisions about his case. Further, "there are no adjustments that would enable him to participate in the trial." "He now displays quite profound apathy and executive dysfunction, and these will be impacting his ability to engage with the evidence and to weigh up when coming to a decision about how to plead." "Mr Salem's communication difficulties are profound, and he will not be able to meaningfully instruct solicitors or give evidence in his own defence."

Professor Suresh Chhetri, Consultant Neurologist

1.17 Professor Chhetri first examined the defendant in 2022 and thereafter reviewed him again in June 2026. He records advanced motor neurone disease, profound physical disability, severe dysarthria, respiratory weakness, dysphagia, fatigue and behavioural changes associated with the disease.

1.18 In his July 2026 report he stated: "SS has severe dysarthria which substantially limits his ability to provide instructions to his legal representatives, communicate effectively, and participate meaningfully in court proceedings." "SS appears to retain a broad

understanding of the nature of the allegations against him and the general purpose of the court process." "However, he is unable to participate effectively and consistently throughout a three-month trial because of the combined effects of his communication impairment, physical disability, fatigue, behavioural changes, and cognitive impairment." He concluded: "Accordingly, it is my opinion that SS is not fit to stand trial."

1.19 He expressly adopted the finding of Dr Latham who identified definite cognitive impairment.

Dr Matthew Jackson, treating Consultant Neurologist

1.20 Dr Jackson is the defendant's treating neurologist and has cared for him over many years. In a letter dated 21 May 2026 he stated: "All four limbs are paralyzed"; "Unable to speak and verbally communicate"; "He has to be hoisted and can't move independently"; and "Has very advanced MND which has progressed since 2017." His opinion was that the defendant was unfit to plead and stand trial. He gave the following prognosis: "My clinical opinion is that he is unlikely to still be alive by Autumn 2027."

Discussion and Findings

1.21 The medical evidence is unanimous. Each expert approaches the matter from a different professional perspective. Dr Jackson provides the longitudinal treating clinician's view. Professor Chhetri brings specialist neurological expertise. Dr Latham addresses the psychiatric and forensic aspects of participation in criminal proceedings. Dr Poole undertakes detailed neuropsychiatric and cognitive assessment. There is no material conflict between them.

1.22 The unanimity of the medical evidence is legally important, although it is not determinative. The Court remains responsible for determining the issue of fitness to plead. The question is one for the judge and not for the experts. Expert witnesses provide evidence and opinion directed to the relevant capacities identified in the authorities; they do not decide the legal question itself. The modern authorities emphasise that the *Pritchard* criteria should be applied through the lens of effective participation. The Court must consider whether the defendant can understand, engage with and make decisions about the proceedings with sufficient ability to receive a fair trial, taking account of any reasonable accommodations that might be made. In the present case, the relevant capacities are principally the ability to make a meaningful decision on plea, to instruct lawyers, to follow the evidence and to give evidence in response to it

1.23 In the present case the significance of the expert evidence lies in its complete consistency. Each identifies profound communication difficulties arising from advanced motor neurone disease. Each describes substantial limitations upon the defendant's ability to give instructions, follow evidence and participate effectively in proceedings. The later reports of Dr Poole and Professor Chhetri further identify cognitive impairment, executive dysfunction and apathy affecting the defendant's decision-making abilities. All four experts ultimately conclude that the defendant is unfit to plead and stand trial.

1.24 The absence of any contrary medical evidence is of particular significance in a case such as this and the consensus is also notable because it represents a substantial change from the position in 2022. At that earlier stage both Dr Poole and Professor Chhetri considered that, despite severe physical disability, the defendant retained sufficient cognitive functioning to understand proceedings and potentially participate with appropriate accommodations. Their current opinions demonstrate that the progression of the disease has materially altered the defendant's condition. The unanimous conclusion of all four experts therefore provides powerful evidence that the defendant's present incapacity is the product of progressive neurological deterioration rather than mere physical inconvenience or communication difficulty alone.

1.25 In those circumstances, whilst the Court must reach its own conclusion, the unanimous and unchallenged expert evidence provides compelling support for the finding that the defendant is under a disability which renders him incapable of participating effectively in the criminal process and is therefore unfit to plead and stand trial.

1.26 One further point is that the consensus covers both limbs of the issue. The experts are not merely saying that attendance at a trial would be impracticable for physical reasons; they identify deficits affecting several of the *Pritchard* capacities—particularly the ability to decide upon a plea, instruct lawyers, follow evidence and give evidence. That makes the consensus considerably more persuasive than a case in which experts disagree as to cognitive capacity but agree only on physical incapacity.

1.27 I recognise that the defendant retains some understanding of the existence of criminal proceedings and some broad appreciation of the allegations against him. Several experts identify those preserved abilities. I agree with the parties that is not sufficient. The evidence establishes that the defendant cannot communicate with the speed, reliability or complexity necessary to instruct his lawyers during a lengthy trial. He cannot realistically respond to unfolding evidence. He cannot weigh, retain and use information

in the manner necessary to decide upon a plea. He cannot give evidence in any meaningful sense.

1.28 Most significantly, the Court accepts Dr Poole's evidence that the deterioration is no longer merely physical. The defendant now displays significant cognitive impairment, executive dysfunction, memory deficits and profound apathy. I find on the balance of probabilities that the defendant is under a disability which renders him incapable of participating effectively in a criminal trial.

1.29 Accordingly, pursuant to s. 4 Criminal Procedure (Insanity) Act 1964, I find that Salem Michel Salem is unfit to plead and unfit to stand trial.

Consequences

1.30 Following a finding of unfitness, the next question is whether there should be a trial of the facts pursuant to section 4A of the 1964 Act. At such a hearing a jury does not determine guilt. Nor is there any verdict of guilty or not guilty. The jury's task is limited to determining whether the defendant did the acts or made the omissions alleged against him. The prosecution must therefore decide whether it seeks to proceed to a section 4A hearing and, if so, identify precisely what acts it contends must be proved on each count. The court must give directions concerning the presentation of evidence. The first of those directions concerns the appointment of a person to put the case for the defence pursuant to the Criminal Procedure Rules. I made the decision that this will be the defendant’s current legal team which is willing and able to continue.

1.31 Mr Gibbs KC, for the defendant intends to make representations to the Attorney General and or the Director of Public Prosecutions that a nolle prosequi should be entered to prevent the case proceeding any further.

1.32 I made a small number of further case management orders. I directed that not guilty pleas be entered. Mr Little KC for the Crown agrees with Mr Gibbs’ six-to-eight-week time estimate for a trial of the facts. Future case management orders will be directed to determining whether and when a section 4A hearing should take place, identifying the issues capable of determination at that hearing, and ensuring that any such proceedings are conducted fairly and proportionately. Both leading counsel are presently unavailable in January 2027. The matter will be listed for further directions on 9 October 2026

Mrs Justice Cheema-Grubb

3 July 2026