

dignity &

rights

ADVICE NOTES

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The Act, when defining incapacity, states that it must be due to either mental disorder or inability to communicate because of physical disorder.

There are important differences in how these separate disorders are managed. In particular, our safeguarding role only applies to people with mental disorder.

We have looked at the cases of people for whom **welfare guardians** were appointed, where the cause of incapacity was "inability to communicate because of physical disorder". We found some people with severe **acquired brain injury** in this group. We found reports to indicate that the damage was much more widespread and affected many more brain functions than "communication". They should have been classified as having a mental disorder.

The category of "inability to communicate" should only be used if that is the only apparent problem, e.g. language disorder after a stroke or "locked-in syndrome."





Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 313 8777

Fax: 0131 313 8778

Service user and carer

freephone: 0800 389 6809

enquiries@mwscot.org.uk

www.mwscot.org.uk