



**mental welfare**  
commission for scotland

# When is “AWI incapacity” more than inability to communicate?

Advice notes

---

Republished August 2020



# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

**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, the Commission's safeguarding role only applies to people with mental disorder.

When we 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."

**This information was first published in 2012. It was reviewed in July 2020 and remains current. Minor changes include updated links and small changes to improve readability.**



Mental Welfare Commission for Scotland  
Thistle House,  
91 Haymarket Terrace,  
Edinburgh,  
EH12 5HE  
Tel: 0131 313 8777  
Fax: 0131 313 8778

Freephone: 0800 389 6809  
[enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)  
[www.mwscot.org.uk](http://www.mwscot.org.uk)

Mental Welfare Commission 2020