

# The Employment Equality Directive and Supporting People with Psychosocial Disabilities in the Workplace

Professor Mark Bell, Trinity College Dublin

Professor Lisa Waddington, Maastricht University

# Contents



- 1. Terminology
- 2. Labour Market Situation
- 3. Stigma
- 4. UN CRPD & Employment Equality Directive
- 5. National Definitions of Disability
- 6. Reasonable Accommodation

# 1. Terminology



- **Psychosocial Disability**
- psychological impairments that, in interaction with other barriers, give rise to a disability.
- e.g. depression, anxiety, stress, addictions, phobias, eating disorders, schizophrenia ...

## 2. The Labour Market Situation



Figure 1.1. The costs of mental ill-health for the economy as a whole are high

A. Costs<sup>a</sup> of mental disorders as a percentage of the country's GDP, 2010

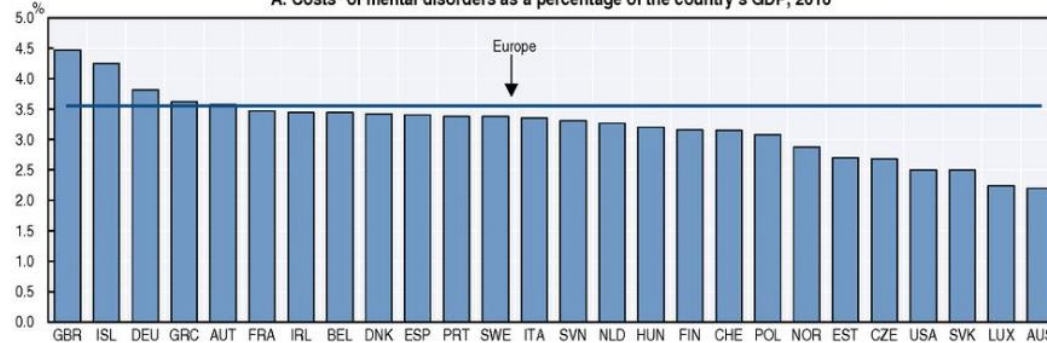
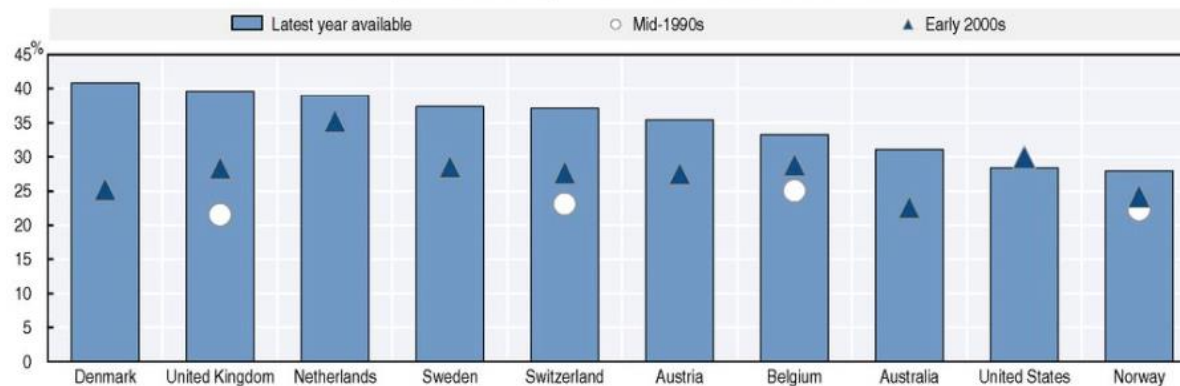


Figure 1.4. The costs of mental ill-health for benefit systems are high

A. Rising share of disability benefit caseload due to mental ill-health

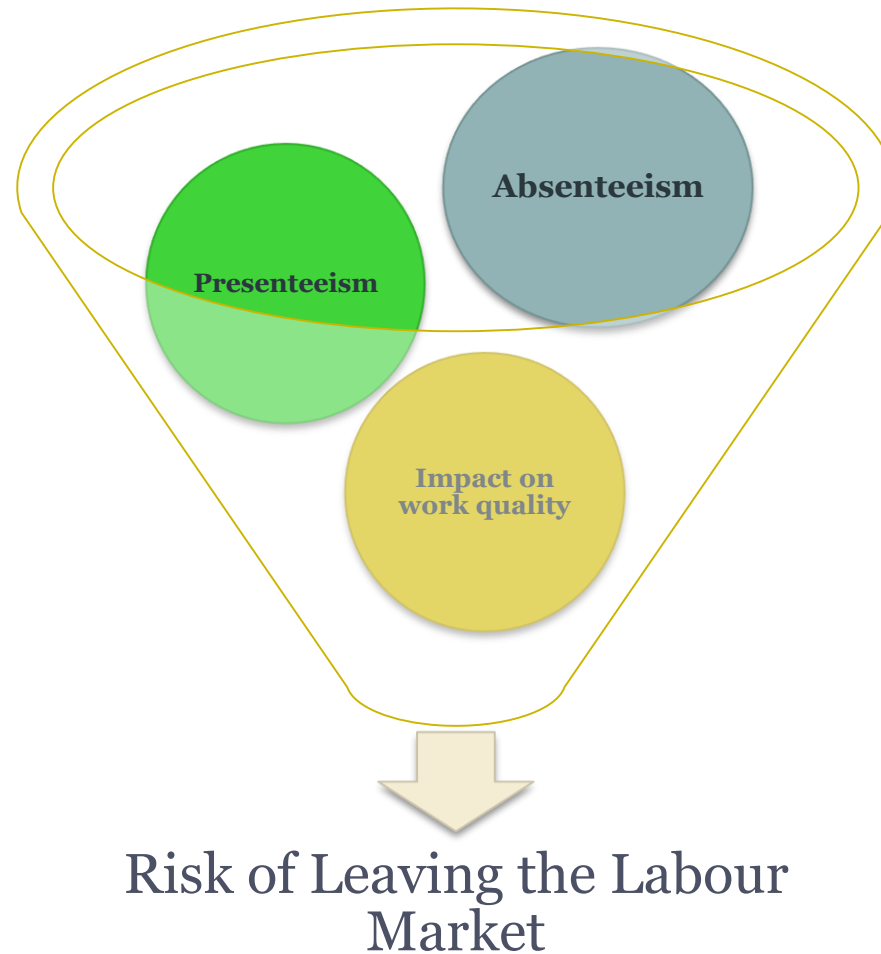


# Survey Data



- Euro Working Conditions Survey (2010)\*
  - Poor Mental Well-Being: 22% women, 19% men
  - Eurobarometer (2014)
  - [http://ec.europa.eu/public\\_opinion/flash/fl\\_398\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_398_en.pdf)
  - Health problems caused/made worse by work?
  - 27%: stress/depression/anxiety
- 
- \* Eurofound and EU-OSHA, 'Psychosocial Risks in Europe: Prevalence and Strategies for Prevention' (Publications Office of the European Union 2014)

# Consequences at Work



# 3. Stigma



<http://knowmental.com/stigma-of-mental-illness/>



[hercampus.com](http://hercampus.com)

- labelling, stereotyping, segregation, discrimination
- dangerousness → avoidance

- 69% of people with schizophrenia anticipated discrimination in finding / keeping employment\*



\*Thornicroft et al  
(2009) *The Lancet*,  
410.



## The dilemma of disclosure

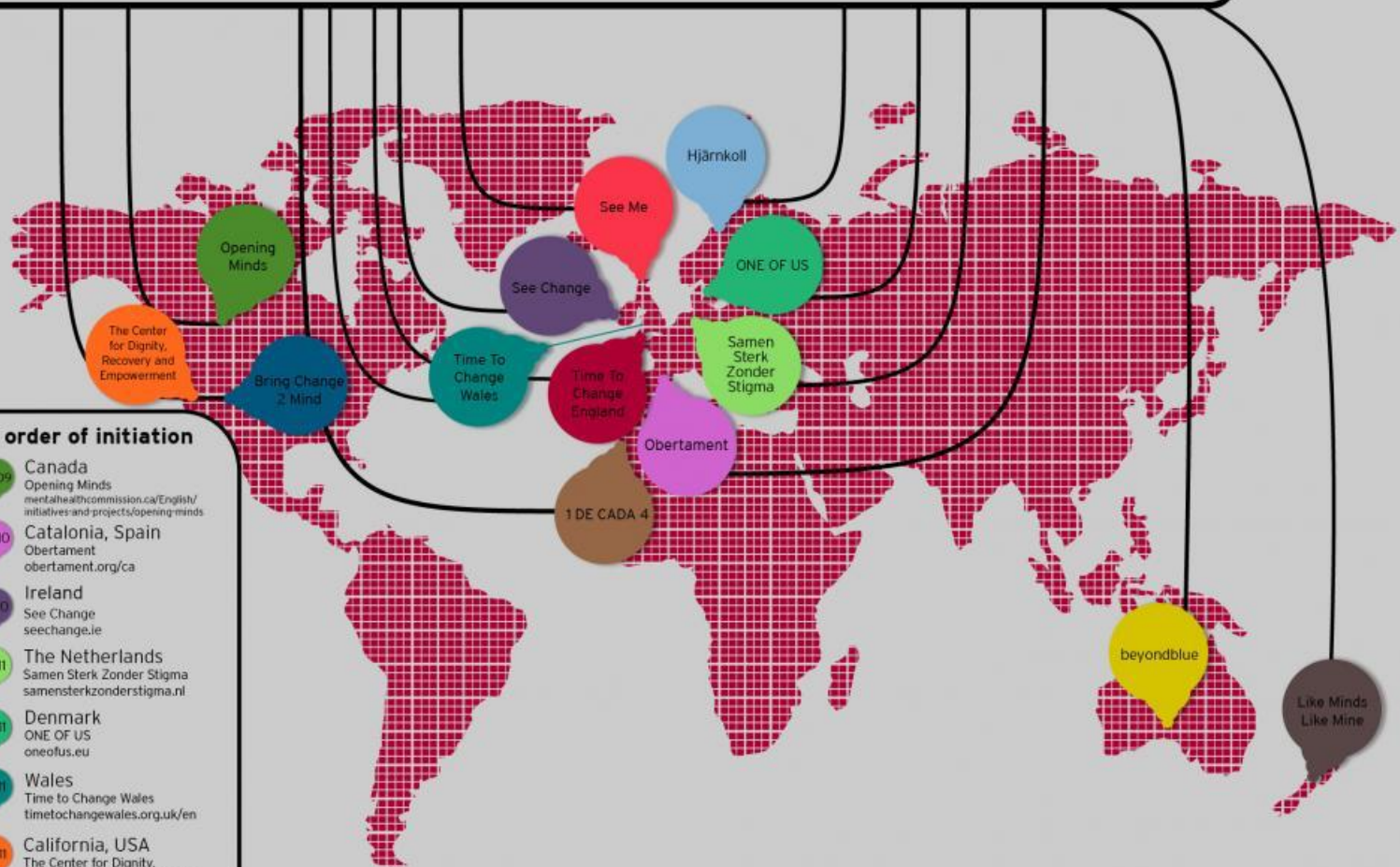


# A Global Movement Against Stigma

Working to eliminate mental health stigma and discrimination around the world

**time to change**

let's end mental health discrimination  
www.time-to-change.org.uk



## Campaigns listed in order of initiation

- 2007 New Zealand  
Like Minds Like Mine  
likeminds.org.nz
- 2000 Australia  
beyondblue  
beyondblue.org.au
- 2002 Scotland  
See Me  
seemescotland.org
- 2007 England  
Time to Change England  
time-to-change.org.uk
- 2007 Andalusia, Spain  
1 DE CADA 4  
1decada4.es
- 2009 USA  
Bring Change 2 Mind  
bringchange2mind.org
- 2009 Sweden  
Hjärnkoll  
nsph.se/hjarnkoll
- 2009 Canada  
Opening Minds  
mentalhealthcommission.ca/English/initiatives-and-projects/opening-minds
- 2010 Catalonia, Spain  
Obertament  
obertament.org/ca
- 2010 Ireland  
See Change  
seechange.ie
- 2011 The Netherlands  
Samen Sterk Zonder Stigma  
samensterkzonderstigma.nl
- 2011 Denmark  
ONE OF US  
oneofus.eu
- 2011 Wales  
Time to Change Wales  
timetochangewales.org.uk/en
- 2011 California, USA  
The Center for Dignity, Recovery and Empowerment  
dignityandrecoverycenter.org

## 4. The CRPD & Employment Equality Directive



- Both instruments prohibit discrimination and require that a reasonable accommodation is made.
- How do the instruments address persons with psychosocial disabilities?

# CRPD



- ‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’. (Article 1 CRPD)
- The term ‘mental’ relates to impairments linked to psychological or mental health problems.
- CRPD Committee and DPOs prefer to talk about people with psychosocial disabilities.

# Employment Equality Directive



- CJEU has developed a definition of disability in *HK Danmark (Ring and Skouboe Werge)* (2013):
- ‘a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers’. (inspired by Art. 1 CRPD)
- CJEU defn. refers to mental impairments – which relate to intellectual or learning disabilities – and psychological impairments.
- Impairment must be long-term.
- Illness which leads to required degree of impairment can result in a disability.

# Challenges Facing Persons with Psychosocial Disabilities



- Establishing that they have a psychological impairment or mental illness:

Diagnosis can be contentious / lack of agreement amongst medical practitioners about what amounts to a psychological impairment or mental illness.

- Establishing that they have an impairment which is long-term:

Condition can be fluctuating / intermittent and severity can be difficult to predict.

# 5. National Definitions of Disability



- Non-discrimination legislation defines disability in 12 MSs: AU, BU, CY, CZ, ET, GE, IR, MA, POR, SP, SW, UK
- Various terminology used in the context of psychological impairment / psychosocial disability:
- ‘psychological condition’ (Austria), ‘loss or impairment ...of the psyche of an individual’ and ‘psychic impairment’ (Bulgaria), ‘psychological limitation’ (Cyprus), ‘psychological...impairment’ (Czech Republic), ‘abnormality in ...mental structure or function’ (Estonia), ‘mental health’ which differs from the typical state (Germany), a ‘condition, illness or disease’ affecting thought processes, perceptions of reality, emotions or judgment or leading to disturbed behaviour (Ireland), a loss, restriction or abnormality of ‘psychological’ structure or function (Malta), ‘psychological functions’ (Portugal), ‘mental impairment’ (Spain), and ‘mental limitation’ (Sweden and GB).

# Different understandings of the term 'mental' impairment



- = psychological impairment (contributing to psychosocial disability) (MA, ES and SW)
- = intellectual impairment (AU, CY, CZ)
- = both psychological impairment and intellectual impairment (EST, UK)



- Non-discrimination legislation does not contain a definition of disability in 13 Member States: BE, CRO, DEN, FI, GRE, HUN, LAT, LIT, NL, PO, RO, SLOVA
- Non-discrimination law which protects individuals from discrimination on the ground of state of health as well as disability may provide greater protection from discrimination for people with psychosocial disorders.



# Recommendation



- There exists great scope for confusion regarding the use and understanding of the term ‘mental’ impairment or disability.
- Given the terminological differences, it is important always to clarify how particular terms are being used.

# Case Law and Persons with Psychosocial Disabilities



- Generally very little case law (exception is Ireland and UK).
- Case law in various MSs has held that the following psychological impairments can lead to a disability: post-traumatic stress disorder, depression, stress, bipolar disorder.
- Other case law has held that people with psychological impairments do not qualify as disabled in some instances.

# Limited relevant case law may indicate:



people with psychological impairments easily qualify as disabled, and courts are not considering their disability status

or

an overall lack of cases brought by persons with psychosocial disabilities.

## 6. Reasonable Accommodation

- How much knowledge does an employer have to know before the duty to reasonable accommodation is triggered?
- Many individuals choose not to disclose their psychosocial disability.
- Failure to disclose may weaken their claim to an accommodation or indicate lack of cooperation.
- Situation is compounded by legal uncertainty regarding duty to disclose.
- Very little case law on reasonable accommodation and persons with psychosocial disabilities.

# Recommendation



- More research needed on why there seems to be so little case law involving people with psychosocial disabilities in most MSs.