



The EU and international legal framework

Oliver Lewis

Professor of Law and Social Justice

School of Law and the Centre of Disability
Studies, University of Leeds

o.lewis@leeds.ac.uk Twitter @olewis75



Brentley Hospital, Bristol, UK, circa 1975



Brentry Hospital, Bristol, UK, circa 1975



UNIVERSITY OF LEEDS

Disability Law Hub, School of Law,
Centre for Disability Studies, University of Leeds

Mental Disability Advocacy Centre www.mdac.org

This morning



UNIVERSITY OF LEEDS

Sources: EU, Council of Europe and UN

Suggested focal issues

Discrimination, reasonable accommodation

Education

Legal capacity

Institutions

To strengthen the capacity of equality bodies to

1. Take a targeted, strategic approach
2. Develop partnerships with civil society
3. Be accountable to the global movement of people with intellectual disabilities
4. Increase numbers of complaints from people with intellectual disabilities
5. Secure permanent structural reform by engaging in law and policy reform

Because people with intellectual disabilities have been ignored by many politicians, media, lawyers and others.

Because equality bodies have been reactive, not proactive.

People been denied education, abandoned by their families, segregated from their communities and denied the opportunities and supports to live how they choose.

= **HUGE opportunity for you!**

EU

- **TFEU** - Article 19 empowers EU to take action to combat discrimination based on disability.
- **Charter of Fundamental Rights** (2000) – non-discrimination (Art 21), integration (Art 26),
- **Employment Equality Directive** (2000/78/EC)
- Ratification of **CRPD** (2010). Declaration: “[t]he Member States remain competent for all matters in respect of which no competence has been transferred to the European Community”.

Council of Europe

European Convention on Human Rights, case-law of
European Court of Human Rights

European Social Charter (Art 15)

CPT Standards

Committee of Minister Recommendations



UN

Human rights treaties (**ICCPR**, **ICESCR**, **CRC**, **CRPD** etc),
statements by **treaty bodies**

Statements by **Special Rapporteurs**



Direct

Where one person is treated less favorably than another **is / has been / would be** treated in a comparable situation

Association: Discrimination against a non-disabled employee because s/he is a carer of a disabled person (ECJ Case C-303/06 *Coleman*, 2008)

Indirect

Where an **apparently neutral provision**, criterion or practice would put a disabled person at a particular disadvantage compared with other people... Except if it's objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary

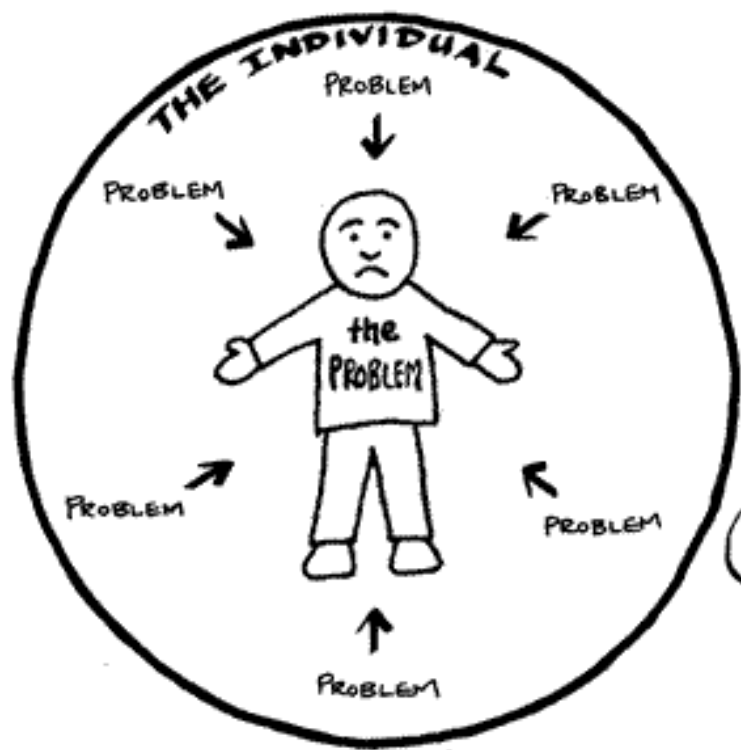
Discrimination on the basis of disability means “any distinction, exclusion or restriction on the basis of disability which has the **purpose or effect** of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of [any right]. It includes all forms of discrimination, including denial of reasonable accommodation” (Art 2)

“**Reasonable accommodation**” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed **in a particular case**, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” (Art 2)

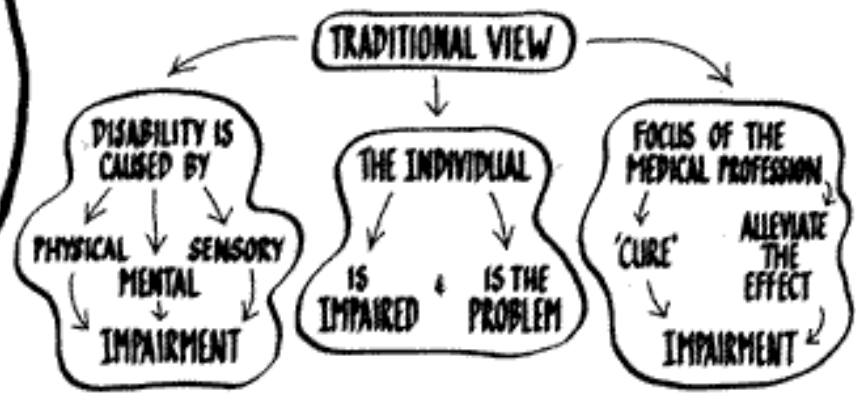
- “Disability is an evolving concept” ... “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (Preamble (e))
- “Persons with disabilities **include** those 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.**” (Art 1)
- Domestic law should be interpreted per the CRPD (CJEU in *Ring and Skouboe Werge*, 2013)



THE MEDICAL MODEL OF DISABILITY

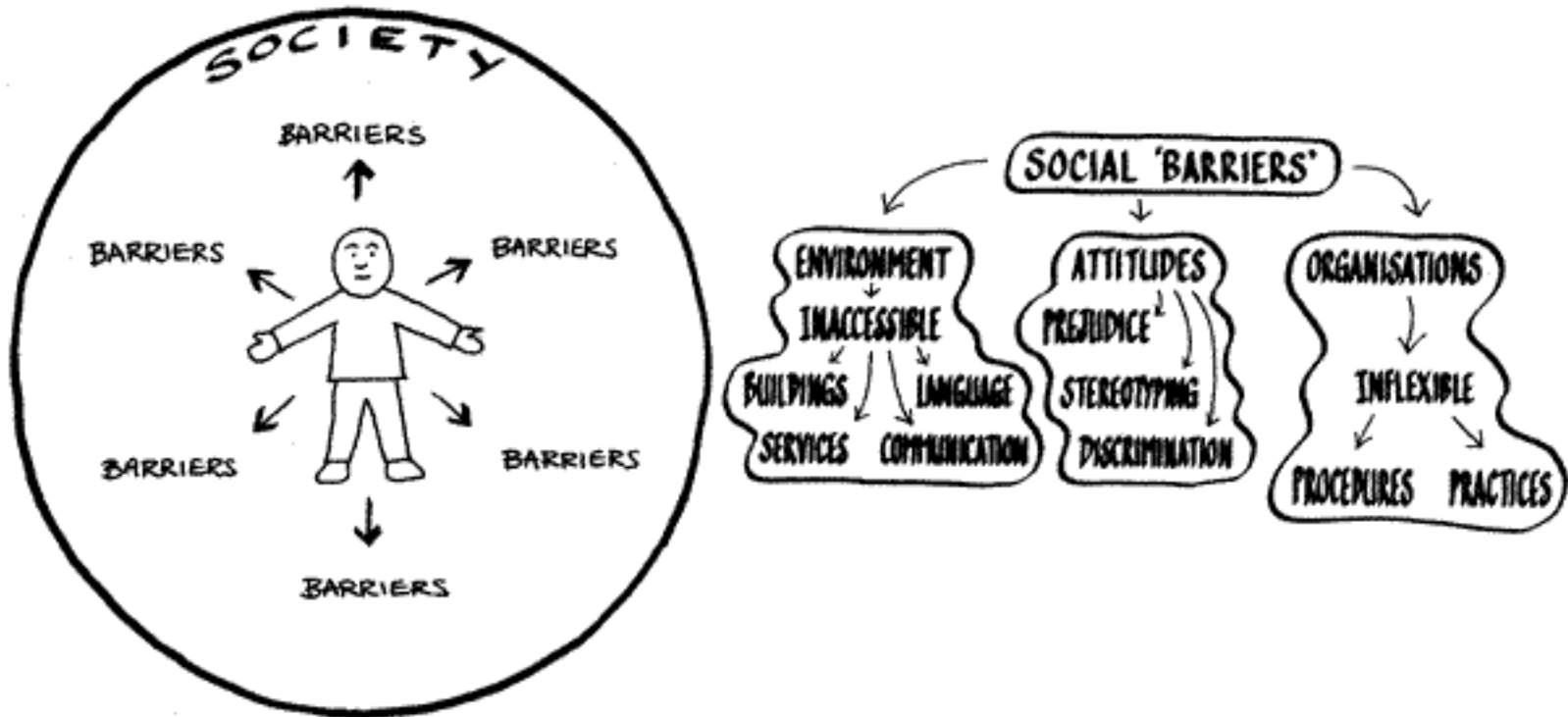


IMPAIRMENTS AND CHRONIC ILLNESS
OFTEN POSE REAL DIFFICULTIES BUT
- THEY ARE NOT THE MAIN PROBLEMS





THE SOCIAL MODEL OF DISABILITY





Framework to ensure equal treatment of individuals in the European Union, regardless of religion or belief, **disability**, age or sexual orientation, as regards access to employment or occupation and membership of certain organisations

Necessary “to guarantee compliance with the principle of equal treatment in relation to persons with disabilities” ([Art 5, Directive 2000/78](#))

Reasonable accommodation

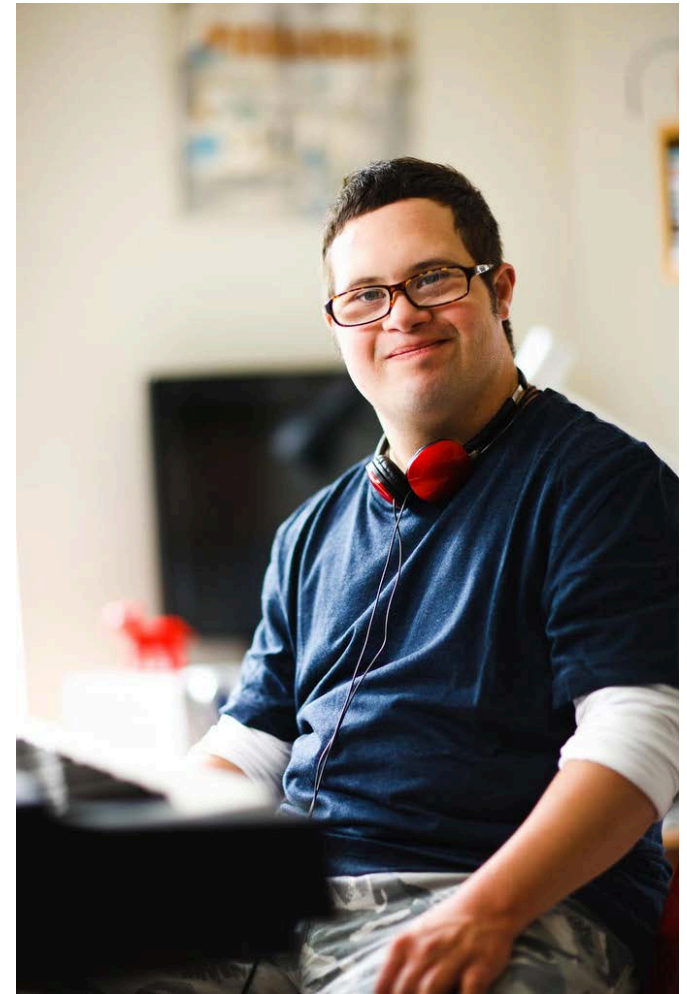


UNIVERSITY OF LEEDS

Employers must to take “appropriate measures, where needed **in a particular case**, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer”.

([Article 5, Directive 2000/78](#)).

Similar to Art 2, CRPD)



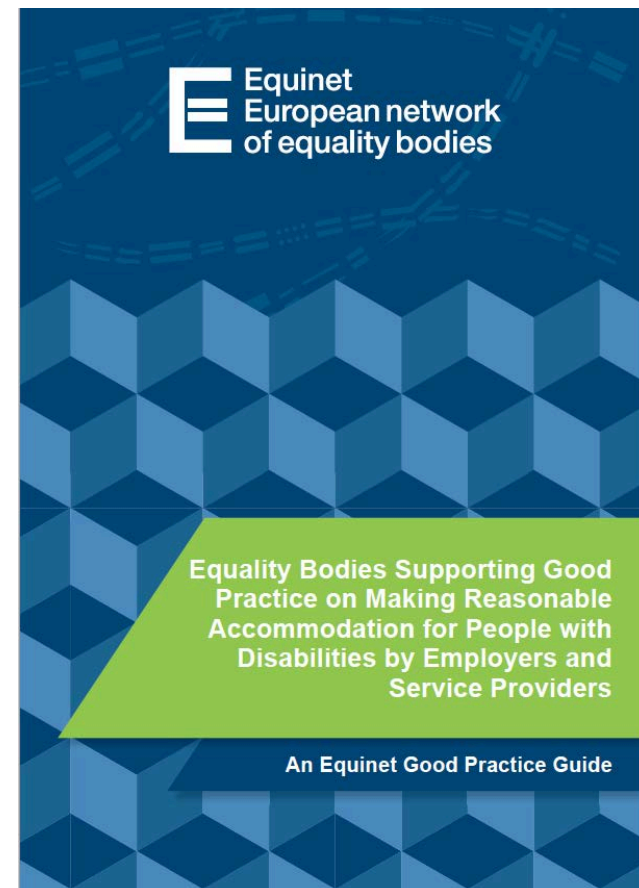
a) Adaptation of the workplace

- Provision of wheelchair access (construction of access ramps, removal of curbs, installation of lifts and handles in corridor and adjustment of restrooms, creation of special parking places)
- Using assistive technology (for blind persons computer equipment adjusted to Braille, electronic voice response systems, Dictaphones, speaking calculators)
- Adapting office equipment or work equipment (ergonomic or orthopaedic chair)



- b) Work arrangements (adjusting working hours, teleworking arrangements, redistribution of tasks between the members of a team, giving periodically rehabilitation)
- c) Work assistance/ job coaching (e.g. sign language interpreters)
- d) Training
- e) Awareness-raising (see Art. 8 CRPD)

Equinet (2013), citing Austrian Institute for SME Research (2008)



1) Education



UNIVERSITY OF LEEDS

Inclusive schools 👍

Segregated / special schools 👎

All children – irrespective of
impairment or level of support

Art 24, and General Comment
No. 4 (2016)



2) Legal Capacity



UNIVERSITY OF LEEDS

Legal capacity ≠ mental capacity

Everyone has legal capacity at all times, in all transactions
(down with guardianship!) ([Art 12\(2\) CRPD](#))

State must provide access to supports ([Art 12\(3\) CRPD](#))

Safeguards against abuse and exploitation ([Art 12\(4\) CRPD](#))

Shift from substituted to supported decision-making, advance directives, planning documents

See [General Comment No. 1 \(2014\)](#) and vigorous critique!



3) Institutionalized people

Children's homes / social care homes / psychiatric hospitals / sobering-up centres / elderly people's homes / prisons / refugee centres (size is irrelevant!)

How can you reach these populations?
Regular independent monitoring?

(Art. 16(3) CRPD, and OPCAT)



Bad things in institutions



UNIVERSITY OF LEEDS

Beatings, sexual abuse, forced abortions, forced sterilizations, boredom, shouting, medication, neglect, lack of education, head-lice, lack of healthcare, denial of meaningful work, boredom, a wasted life...

- Torture and ill-treatment ([Art 15](#))
- Exploitation, violence & abuse ([Art 16](#))
- Mental and physical integrity ([Art 17](#))
- Girls and women ([Art 6](#))
- Children ([Art 7](#))



Institutions are bad



UNIVERSITY OF LEEDS

- Right in domestic law ([Art 19](#), [Art 4](#))
- Choice as to where and with whom to live ([Art 19\(a\)](#))
- Specialist services to prevent isolation / segregation ([Art 19\(b\)](#))
- Services to general population accessible ([Art 19\(c\)](#), [Art 9](#))
- “Abolish“ mental health detention ([Art 14](#))

CRPD Cttee writing general comment





1. Many sources of law, strategies, guidance
2. CRPD contains lots that can help you
3. Ask for help – your peers, people like me
4. Try something new.

People with intellectual disabilities deserve your creativity!