**Can Judges Learn Something from Blue Peter?: Attitudes toward Disability**

1. If you were lucky in Christmas 2010, you will have received a glorious and disgusting handmade Christmas card from a child at school – all glitter and coloured paper. Many of you will have had the experience at home, when your glorious and disgusting son or daughter, niece or nephew, came back school, smiling as they thrust the card into you hand.

2. This was part of the 2010 Blue Peter Charity Appeal – an idea as old as the programme itself. But look a little closer and you would see how things have changed. The charity, Wheelie Kids, is about helping disabled children with access problems by providing them with electric wheelchairs. Naturally, this is good for the disabled students – electric wheelchairs are generally much faster than ones which are manually powered - but also for other students and the school as a whole. It allows the students to take ownership of the problem by take owner of the solution – a charitable task which the school are uniquely equipped to do. The charity is direct and nearby – it is something that children will see as having a real effect on their peers in real time – cause (glorious and disgusting) has a real effect (electric change). Glorious!

3. But the Blue Peter also got "the solution" right on an even more profound level. They interviewed a number of kids who had been

earmarked for a Wheelie Kid upgrade to their wheelchair – and then showed the school where the kids were settling down to a cardboard-based, messy activity of putting together homemade Christmas cards with their able-bodied peers. The curious thing was that, amid the card and glue and coloured paper and the glitter, you could not tell who were the disabled students and who were their able-bodied peers. They were just students, having a good time. The effect on the self-esteem of the disabled kids, their families and the disabled community at large was palpable. It was gloriously disgusting.

4. Now perhaps to contrast the producers of Blue Peter's approach to the one adopted by Judges within this jurisdiction is unfair. It may be that the BBC is inherently a public media organisation and is bound to be open with its decisions; contrast to the judicial system in England and Wales and the decision-making process, both in an individual case and in committee where the rules are decided seems closed and not in the public domain. I, for one, hope that individual Judges and their peers have taken the Government's detailed guidance in the Codes of Practice which govern the rights of disabled people when considering public authority functions, the duty to promote disability equality and the new guidance over the new Codes of Practice over the Equality Act 2010. But I cannot definitively say "yes" or "no" because the various Committees go about their business without a meaningful right to members of the public for scrutiny and comment.

5. This seems wrong to me. As I have argued in another article in the Equal Opportunities Review (page 213, June 2011), it is surely the goal of a modern judiciary to leave no doubt in the public's mind that they are above reproach in their attitude towards disabled people. To do this they need to have a raft of objectively justifiable policies, training and monitoring, available for public scrutiny.

6. The International Convention on the Rights of Persons with Disabilities[1] has been around for a number of years. **Article 13**, **Access to Justice** should be required bedtime reading for Judges and Magistrates throughout the European Union; it is a necessary tool for ensuring that all the other rights are recognised and given effect to in a concrete way – particularly **Equality and Non-discrimination (Article 5)** and **Awareness-Raising (Article 8)**. **Article 13(2)** says this:-

> **"In order to help ensure effective access to justice for persons with disabilities, states parties shall promote appropriate training for those working in the field of administration of justice,… ."**

Now it seems to me that looking at the text, the duty on Judges to have appropriate training is clear. But, more importantly, the European Foundation Centre, a European Union think-tank, agree.

[1] www.un.org/disabilities/convention/conventionfull.shtml

In their “Study on Challenges and Good Practices in the Implementation of ICRPD”[2], they say:-

**“Training is an essential component of Article 13 and should be provided to all justice agency personnel so far as to facilitate access to justice for persons with a disability. Therefore training should be provided to…legal practitioners, magistrates and judges…and should cover human rights and access to justice for persons with disabilities. Additionally, training for justice agency personnel should include the identification of persons with disabilities involved in the legal process, adjustments required to ensure access, and training in communication skills for work with persons with disabilities.”**

7. The British Judges’ insistence that appropriate training in disabilities related issues should not be mandatory in High Court, Court of Appeal, Privy Counsel and Supreme Court Judges appears to be a breach of International law, as well as nonsensical; however, I did not realise myself, until doing the preparatory work for a talk I gave in Trier[3], Germany to Judges from around the European Union, that the innocuous Council decision 2010/48 of November of last year has the effect of also meaning that what was International law is now also European law[4].

[2] www.study-uncrpd.eu/files/repositery/20110126180047_VC20081214_FINAL_REPORT_ExSummary_EN_111010.pdf Oct 2010, page 116

[3] 20th and 21st June 2011

[4] The ICRPD is a “mixed international agreement” i.e. a convention where both the EU and Member States are contracting parties to it. Under Article 216 of the Treaty on the Functioning of the European Union the Treaty is binding as European law just as much as the Council Directives or Treaties.

8. The implications of that are profound, as any constitutional lawyer will tell you. From being a useful guidance to what the domestic law must mean applying the approach in **Brind**[5], the law as best interpreted should surely be that wherever domestic legislation and the IPRPD clash, the IPD “wins” and the domestic legislation is struck out[6].

9. This has profound implications for the law in relation to disabled people, indeed, so much so, that I will not go into any of the ramifications here. But, for a start, it means that High Court Judges must get training in equal opportunities and disability rights soon or risk a judicial review. What training and in what timescale must be for the Judges with their various Committees to sort out themselves. Indeed, the Judges may tempted to leave that question, along with the fine detail of the interpretation of Article 13(2) of the ICRPD, to a domestic case to “sort the matter out”. And that would be a real pity.

10. The Times gave it’s front page to a piece call “Verdict on the judges: too male, too white, too elitist”. “Leading figures” of the top judiciary – among then Lord Falconer, Lord Judge and Lord McNally – have given evidence in front of House of Lords about the “stranglehold” of white

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[5] R v Home Secretary ex parte Brind [1991] 1 AC 696

[6] See e.g. Marleasing SA v La Comercial Internacional de Alimentacion SA (C-106/89) European Court of Justice (Sixth Chamber)

Oxbridge males on the judicial system. The resistance of mandatory training of the higher courts is a prime example.

11. All is need to change is sufficient will from the top of the judicial professional. To allow the situation to go on until successfully challenged by the disabled community is to not take seriously the proactive duty to actively promote rights of people with a disability. Training of Judges, who must deal with case involving disabled people, is a fundamental requirement, "an essential component" - and not training as to the law but as to real people, real cases and real situations so that Judges can come up with real solutions to real problems. To expect disabled people to have to wait for 10 years until the domestic courts have ruled on the matter is to ignore the rights of disabled people, rights which the Government has affirmed in the ICRPD.

12. The movers and shakers from our judiciary need a lead, they should remember the example of the produces of Blue Peter and the three lessons they teach us:

    a. the time for making a decision is now, not in the future;

    b. sometimes the decision can be made on its own because it's clearly right, without waiting for supportive case law; and

c. the correct attitude should be proper acceptance of the equal role that disabled people have in all aspect of our life, not the minimum that case law dictates decision makers can get away with.

13. Mandatory training in disability practice for all Judges is a simple change to make – simple and disgustingly glorious.