

# NAFLIC

*National Association For Leisure Industry Certification*

## **Standards & Related Documents Committee**

### **TECHNICAL BULLETIN - AUGUST 2002**

#### **246. Mentally Impaired Passengers**

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We are aware of two fatal accidents this year involving mentally impaired passengers on amusement rides. Firstly, in May 2002, a 24 year old man who was part of a group outing to an amusement park in Denver, Colorado, was killed by a fall when he was said to have unlatched a seat belt and escaped the passenger restraint on a "Rainbow" ride. Secondly, in July 2002, a 15 year old girl with Down's Syndrome died as a result of a fall from a Ferris Wheel in Warrington, England.

Fatal falls affecting mentally impaired passengers have occurred previously in the UK, though we think that it is at least 15 years since the last such occurrence, also on a Wheel.

Because such unfortunate accidents are thankfully rare, the need to consider how to limit participation of mentally impaired passengers, on grounds of safety, is not frequently discussed and we realise that this is the first Technical Bulletin that NAFLIC has ever produced on this subject. The requirement to balance the over-riding need for safety with the wish to provide leisure opportunities to those with some mental impairment is clarified by the Disability Discrimination Act 1995, which may be purchased from The Stationery Office Ltd. Some very limited summary of specific points is given below. The full text of the Act should be consulted for authoritative information. (It also covers physical disabilities, not discussed in this Technical Bulletin).

It is unlawful for a provider of services (including facilities for entertainment, recreation or refreshment) to discriminate against a disabled person in refusing to provide, or deliberately not providing, to the disabled person any service which he provides to members of the public. It is irrelevant whether the service is provided on payment or without payment.

A provider of services doesn't discriminate against a disabled person if he can show that the treatment in question is justified. Treatment is justified only if in the opinion of the provider of services :-

- one or more of the conditions mentioned in Section 20 subsection (4) of the Act are satisfied; and
- it is reasonable, in all the circumstances of the case, for him to hold that opinion.

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But Section 20 subsection (4) specifically explains that the treatment is justified if it is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person).

A person has a disability for the purposes of the DDA 1995 if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. That is to say a “disability” is an “impairment” which adversely affects ability in a long-term way.

Amongst other things, an impairment may be taken to affect the ability of the person concerned to carry out normal day-to-day activities if it affects :-

- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

This latter may be particularly important for certain types of amusement ride, such as Ferris Wheels, as evidenced by experience. In some instances, mentally impaired passengers may become very frightened by the motion of the passenger unit, including the swinging of a Big Wheel car. Not all of these individuals will be capable of perceiving that attempting to escape the frightening situation may put them at severe risk.

Normally, the safety of mentally impaired passengers relies very much on assessments of their capabilities, sometimes made on the spot, by carers and supervisors. A designer of a new amusement ride needs to consider whether there are particular groups of individual who should be disbarred, on safety grounds. Such a ban may possibly be appropriate if foreseeable behaviour of impaired individuals may not be known or deducible to carers or supervisors. Where a ban is needed, the wording included in the instruction manual should be as specific as possible about the passenger capabilities required to safely ride.

However, the enforcement of such a ban by controllers is not likely to be totally reliable. Controllers report that carers, who can often be fairly inexperienced young people, looking to have fun in their own right, are frequently seen to “encourage” those in their charge to ride when they clearly don’t wish to. Operators and attendants will not always be aware of these circumstances. (Nor will they always be aware that a particular passenger has a mental impairment).

We realise that, in the case of rare occurrences, it is notoriously difficult and not always reasonably practicable to maintain effective safety systems capable of dealing with the risk. Lack of familiarity with the issues at stake is inevitable when the frequency of related accidents is measured in terms of years.