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The Disability Discrimination Act comes into force on 1 December 2004 and places new responsibilities on all organisations to ensure that people with disabilities can gain full access to buildings and facilities. Ian Fowler, Norbain's Technical Training Manager, explores the issues this raises for Access Control installers and operators.

Part III of the Disability Discrimination Act (DDA) 1995 comes into force on October 1st and marks the culmination of a series of measures designed to protect the interests and enhance the lives of people with disabilities. Since 2 December 1996 it has been unlawful for organisations – described as service providers in the legislation – to treat disabled people less favourably for a reason related to their disability. In October 1999 this was extended to a requirement upon service providers to make “reasonable adjustments” for disabled people, such as providing extra help or making changes to the way services are provided. From October this year service providers may have to make other “reasonable adjustments” in relation to the physical features of their premises to overcome physical barriers to access. This aspect of the legislation is of particular relevance to all installers and operators of Access Control systems.

Like much legislation the true impact of the DDA will be determined by interpretation and case law. To assist service providers in understanding what is required, the Disability Rights Commission (DRC) has produced a 120 page Code of Conduct to Part III of the DDA. The Foreword to the Code openly presents the core dilemma for organisations with Access Control systems:

The Code sets out our understanding of the law but there is undoubtedly some ambiguity and there are areas that will require testing in the courts. An example of this is the question of the measures service providers should take from 2004 to ensure that a physical feature is not making their service impossible or unreasonably difficult for disabled people to use. The Act sets out four

possible options for service providers: removing, altering or avoiding a physical feature or providing the service by alternative means. The DDA does not prescribe what approach the service provider should use. However, the DRC believes that good practice and the most sensible approach will be to remove or alter the physical barrier to the service wherever this is possible. This is undoubtedly the most effective long term solution for both the service provider and disabled people.

Physical features include “any feature on those premises or any approach to, exit from or access to such a building” and “any fixtures, fittings, furnishings, furniture, equipment or materials in or on such premises”.

From this it is clear that in the context of Access Control provision, the Act presents two core issues that need to be addressed:

1. Definition of disability.
2. The need to strike a balance between access and security.

The DRC Code of Practice defines disability as:

A person has a disability 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.

The nature of disability is extremely varied and should never implicitly be equated with wheelchair access. Whilst it is essential to ensure that a wheelchair user can access your building unaided through the appropriate location of keypads etc., full consideration must also be given to those with impaired eyesight, hearing, limited limb mobility and all people with learning disabilities. Certain conditions are not considered as amounting to impairments for the purposes of the Act. First amongst these is:

Addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed);

“THE NATURE OF DISABILITY IS EXTREMELY VARIED AND SHOULD NEVER IMPLICITLY BE EQUATED WITH WHEELCHAIR ACCESS.”

This leaves it unclear, however, whether obesity would come under the terms of the DDA.

In relation to the second issue, it is clear that under the Act service providers should consider “removing, altering or avoiding a physical feature or providing the service by alternative means” to quote the DRC. This raises the possibility of either removing an Access Control system to ensure compliance with the legislation, introducing additional technologies or features to aid use of the Access Control system (such as an audible direction finder to a reader, strong colour-coded keypads and Braille) or introducing multiple Access Control systems to accommodate multiple disabilities. This has obvious cost implications of course, but could also compromise the overall security of the premises.

Is it possible to devise an Access Control system that complies with the Act? Most definitely. One of the most frequently used words in the DRC's Code of Practice is ‘reasonable’. The legislation requires service providers to take ‘reasonable steps’ to facilitate access and avoid discrimination. The Code provides an inexhaustive list of factors that might be taken into account in consideration of what is reasonable:

- Whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question;
- The extent to which it is practicable for the service provider to take the steps;
- The financial and other costs of making the adjustment;
- The extent of any disruption which taking the steps would cause;
- The extent of the service provider's financial and other resources;
- The amount of any resources already spent on making adjustments;
- The availability of financial or other assistance.

This implies considerably more room for manoeuvre than a bald reading of the legislation might suggest and certainly suggests a sensitivity and understanding of the practical and financial limitations faced by smaller service providers.

Access Control systems are clearly covered by the legislation and yet little interpretation, if any, is currently available as to how an Access Control system might be affected by the legislation and what ‘reasonable steps’ would need to be taken by an organisation to ensure compliance. To assume however than all people with disabilities must have access to an automated or electronic alternative to the existing inaccessible Access Control system may be unwise. The DRC Code of Practice includes numerous case study examples of how the legislation might be interpreted. Considering the needs of visually impaired people, the Code provides the following example:

A restaurant changes its menus daily. For that reason it considers it is not practicable to provide menus in alternative formats, such as Braille. However, its staff spends a little time reading out the menu for blind customers and the restaurant ensures that there is a large print copy available. These are likely to be reasonable steps for the restaurant to have to take.

Using this as a model suggests that the permanent availability of personal assistance to people with disabilities to use an Access Control system or bypass it to gain access to the premises, might be considered a reasonable step for an organisation to take. This may prove costly to the organisation and less than ideal in terms of supporting the independence of people with disabilities.

As mentioned at the beginning of this article, case law is urgently required to provide further guidance. Good news for lawyers.