

IN THE MATTER OF THE EQUALITY ACT 2010 &
WORSHIPPERS' PARKING CHARGES

ADVICE

1. I have been instructed to advise on behalf of Woking Borough Council (WBC).

Background

2. The facts of this matter are relatively straightforward. WBC charge for parking on Sunday mornings in the town centre. This was implemented in two stages in 2003 and 2006. Some users of the car parks do not pay for their parking on Sunday mornings by arrangement with WBC. These users attend churches close to the car parks. This is done either by way of a validation machine or by permit issued to the church goer.

3. WBC have made it clear in my instructions that although free parking is only extended to churches there is no reason in principle why this would not cover attendees to mosques on Fridays or Synagogues on Saturdays in appropriate circumstances.

4. Objections to the policy have been received from a member of the public. She objects to the provision of free parking for those attending the local churches on a Sunday as it is discriminatory. The matter has also been discussed on the National Secular Society website. There is presently no legal challenge to the policy however concerns having been raised by a member of the public WBC thought it appropriate to seek guidance on the matter.

Analysis

5. The first issue is to decide whether the act of giving free parking to the churchgoers is in fact discriminatory. WBC is giving a free service to one group(s) of people (churchgoers) to the exclusion of others. This is unequal treatment. This would appear to be discriminatory.

6. The next question is whether the discriminatory act is direct or indirect discrimination under the Equality Act 2010. This is not entirely straightforward as at first glance this appears to be a straightforward direct discrimination claim. WBC is offering free parking to Christians attending church locally whilst everyone else irrespective of religion or belief pays. However it is not only Christians who will be attending the churches but also husbands/wives, carers, choristers, bell ringers and organ players. The benefit accrues to church attendees not solely to Christians.

7. Attendance at church is a manifestation of belief rather than the belief itself. Christians attend church however it is not necessary to be a Christian to attend church although most people who attend church are in fact Christians. So the provision criteria and practice being applied in this case is the need to attend church to get free parking on a Sunday morning. This requirement is one that other non-Christians are less likely to be able to comply with. This means that they are being indirectly discriminated against.

8. Being a case of indirect discrimination it is possible for WBC to justify the provision of free parking by proving that the provision of free parking is a proportionate means of meeting a legitimate aim. What I have struggled with in this case is what the legitimate aim is?

9. WBC has created through the charging policy a disadvantage to a particular group of people namely churchgoers. This disadvantage is connected to the characteristic of their religion. The way to remove the disadvantage (the parking charge) is to allow churchgoers to park for free.

10. The aim of the policy would appear to me to be to remove barriers to those who wish to worship on a Sunday in town centre churches. The free parking allowance removed the immediate impact of the change in car park charging policy. Moving forwards however a policy which continues to advantage one group of people over another on the grounds of a protected characteristic for an indefinite period of time may prove difficult to defend.

11. A phased transition to the new charging system would succeed as being proportionate whereas a long term subsidy would need to be the subject of a full Equality Impact Assessment (EIA) with regular reviews to ensure compliance with the Equality Act 2010.

12. In summary:

a) The policy in relation to free parking is indirectly discriminatory.

b) It is possible to justify indirect discrimination on the grounds that the policy is a proportionate means of achieving a legitimate aim.

c) The legitimate aim identified by WBC is to prevent churchgoers from being disadvantaged by a characteristic connected to the Christian religion caused by WBC charging for parking on Sunday.

d) The only way to remove the disadvantage is to remove the charge.

e) I believe a policy of ongoing subsidy without any limitation in time could be held to be disproportionate.

f) In order to meet the justification requirements laid down in the Equality Act 2010. I suggest that there is an EIA carried out immediately to properly measure the impact of the 'free parking' including the cost to WBC, effect it has on churchgoers and the effect it has on the wider community.

g) If it is decided having carried out the EIA that the practice of 'free parking' is to continue then the policy should be regularly reviewed to ensure that it is meeting its aim without disproportionately disadvantaging others.

Peter Doughty