

Discriminatory car parking charges

Some local authorities have decided to allow worshippers to park without charge at times when others are charged. Such policies disadvantage the non-religious and those of other faiths not privileged by this arrangement. We are advised that this unequal treatment is in breach of equality laws.

What's the issue?

In recent years, a number of local authorities have scrapped free evening and Sunday parking and introduced charges. This has been met with hostility by some churchgoers who use car parks at these times. Churchgoers in Nottingham called the introduction of Sunday parking fees a "tax on worshippers".¹ Similarly, Church leaders in Carmarthenshire² and a local councillor in Sutton³ have both described plans to introduce Sunday parking charges for all as a "tax on religion". According to one report in the *Gloucestershire Echo*, illegally parked churchgoers said they felt "persecuted" after being issued with parking tickets during Sunday worship.⁴

In some cases, local authorities⁵ have introduced policies that give religious worshippers preferential treatment, enabling them to park at subsidised rates or without charge, whilst others using the car park at the same time must pay in full. We are concerned that this represents a growing trend. We consider such unequal treatment to be unfair, discriminatory and potentially unlawful.

Justification

In justifying their preferential treatment for worshippers, Woking Borough Council have said their policies reflect the 'important role' that religion plays in society and how it promotes 'social inclusion'.

¹ <http://www.thisisnottingham.co.uk/Church-anger-tax-worship-city-car-drivers/story-13209139-detail/story.html>

² <http://www.thisissouthwales.co.uk/Carmarthenshire-parking-fees-plan-tax-religion/story-18353664-detail/story.html#axzz2PxU94E69>

³ http://www.thisislocalondon.co.uk/news/10306182.Councillor_claims_Sunday_parking_plans_is_tax_on_religion/

⁴ <http://www.thisisgloucestershire.co.uk/Worshippers-Cheltenham-church-claim-parking/story-13579995-detail/story.html#axzz2PxRgkdV8>

⁵ Including, for example, Canterbury City Council, Newcastle City Council, Nottingham City Council, , and Woking Borough Council amongst others.

We maintain that worshipping at a religious service is no more or less important than other activities citizens may carry out while parking, such as shopping, visiting friends or other leisure pursuits. As Woking Borough Council's own equality impact assessment found, such secular activities also promote social inclusion and are as important as religious observance to building and maintaining the social as well as the economic fabric of communities. We therefore regard the unequal treatment as an undue and unfair religious privilege worthy of challenge.

Case study: Woking

Woking Borough Council (WBC) implemented parking charges for town centre car parks on Sunday mornings in two stages, in 2003 and 2008. However, after representations were made to WBC from churches in the town centre, the local authority decided not to charge worshippers attending local churches. To enable worshippers to avoid paying for parking, worshippers have either been given free parking permits or are able to validate their tickets using validating machines which have been placed in local churches.

The most up to date estimate of the cost of the current arrangements to WBC is £53,370 per annum.⁶

Following this policy being questioned by the National Secular Society, WBC obtained legal advice confirming that their practice could amount to discrimination. WBC subsequently commissioned an Equality Impact Assessment (EQIA)⁷ which set out criteria to be met to ensure WBC was not committing unlawful discrimination.

The report suggested WBC may be able to continue with the practice of allowing worshippers to park free *if* the Council was able to determine that it is a 'proportionate' means of achieving a legitimate aim, having had proper regard to all of the issues raised in the Equality Impact Assessment.

Alternatively, it suggested WBC could make car parking free for all visitors to the town centre on Sunday between the hours of 7.00am and 1.00pm or all day.

In July 2012, ignoring many of the issues raised in the EQIA, councillors officially adopted a new policy statement which continued free parking concessions to worshippers – but extended the privilege to some other faith groups.

An alternative motion was put forward by the council's Liberal Democrats to extend the free parking on Sundays to all residents of Woking between 7am and 1pm but was not upheld.

Cllr Denzil Coulson, leader of the Woking Liberal Democrat group, commented⁸:

"We strongly believe that Woking residents of all faiths or none are entitled to benefit from free parking. We felt it would have been fairer to spend £156,000 to help all 96,000 residents on a Sunday rather than spending £40,560 for just 345 cars belonging to one particular faith group."

⁶ <http://www.secularism.org.uk/uploads/freedom-of-information-response-woking-26-04-13.pdf>

⁷ <http://www.secularism.org.uk/uploads/sunday-parking-charges-report-to-woking-borough-council.pdf>

⁸ <http://denzilcoulson.mycouncillor.org.uk/2012/09/30/should-be-free-parking-for-all-on-sundays-in-woking/>

"Not only would this have been a fairer approach, it would have helped to stimulate economic activity in the town on a Sunday."

As WBC's revised policy still disadvantages the non-religious, legal advice obtained by the National Secular Society suggests that the policy is likely to be in breach of equality law.

Legal Challenge

In April 2013 the National Secular Society launched a legal challenge to Woking Borough Council on the basis that in its provision of car parking services it has treated non-churchgoers less favourably than churchgoers, because of their lack of Christian belief.

Our legal advice suggests that allowing free parking for worshippers on Sunday mornings amounts to direct discrimination on the grounds of religious belief (which is a protected characteristic and, for the purpose of the Equality Act, includes non-belief). 'Direct discrimination' occurs if the reason for a person being treated less favourably than another is one or more of the protected characteristics set out in the Act.

As we understand it, WBC concedes that its practice is discriminatory but claims the practice amounts to 'indirect discrimination'. 'Indirect discrimination' occurs when a policy applies in the same way for everybody but has an effect which particularly disadvantages a group of people who share any of the protected characteristics set out in the Equality Act.

Under equality legislation, 'indirect discrimination' can be justified on the basis that it is a proportionate means of achieving a legitimate aim. WBC claims that as places of worship "encourage people to participate in society, thereby promoting social inclusion", its aim of supporting the faith communities of Woking is both proportionate and justified.

However, as previously stated, Equality Impact Assessment found that secular activities also enhance social integration.

The EQIA states:

"The Town Centre is not seen by non-religious groups as solely offering a commercial and retail experience. As an illustration, carers balancing home, work and their caring responsibilities often find Sunday a convenient day to relax by visiting the Town Centre as other family members who work may be around to provide some respite. Moreover, lone parents balancing childcare, work, commuting, and the school run may find Sunday the best day to shop, and for disabled residents who want to visit the Town Centre, shop and have a meal with other family members or friends who may be working in the week, Sunday is often the most convenient day. Thus Sunday for non-worshippers accommodates flexible working patterns and fits with the rhythms of family life. This is seen as being as important as religious observance to building and maintaining the social as well as the economic fabric of communities. It is seen as important to community cohesion in Woking, and to supporting diverse family values and family structures. Therefore, in the same way as the church in Woking

is seen as fulfilling an important community and social integration function, the discourse on parking charges it is argued, also needs to be expanded to take account of diverse lifestyles and secular activities that also enhance social integration. Along with church activities, those activities are also seen as contributing to the dynamism of the Town Centre, to its social milieu, and to its cohesion.”

This indicates that WBC’s ‘legitimate aim’ of supporting faith communities is in itself discriminatory – and therefore cannot in fact constitute a lawful legitimate aim.

It should be noted however that this kind of ‘objective justification’ defence is only relevant to claims of indirect discrimination. If, as we maintain, the application of discriminatory parking charges amounts to ‘direct discrimination’, no such legal defence is available to WBC.