



Department
for Business
Innovation & Skills

**TIPS, GRATUITIES, COVER AND
SERVICE CHARGES**

Call for evidence

SEPTEMBER 2015

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Tips, gratuities, cover and service charges: employer practice

Summary

- **The payment of tips, gratuities, cover and service charges is prevalent in a number of sectors. Concerns have been raised about the treatment of such payments in the hospitality sector, particularly in relation to the percentage of each payment that goes directly to the employer.**
- **This call for evidence is to gather information on how tips, gratuities, cover and service charges are collected and on current practice as to whether and how much employers deduct from their employees.**
- **Views are also sought on the role for Government in ensuring greater transparency. Government will also consider whether there is action that can be taken to ensure that employers do not withhold from tips anything other than the costs to the employers of administering credit card and payroll transactions.**
- **The Government is keen to understand practice in the hospitality sector, but would also like to hear from employers and workers in other sectors.**

Tips, gratuities, cover and service charges in the UK.

1. There are some 133,000 enterprises in the hospitality and service sectors, where tipping is common. These sectors are an important part of our economy, employing some 3.33 million workers. Restaurants, hotels and bars make up the largest proportion of the sector (about 75.6 per cent), but tipping is also an important feature in industries such as hairdressing, casinos and private car hire.
2. The Government has previously worked with industry and worker groups to develop guidance on the treatment of tips. The voluntary Code of Practice sets out measures that aim to improve the level and accessibility of information available to customers and workers. It provides practical guidance on how to operate in a fair and transparent way and aims to ensure that customers have the information they need to make an informed choice before they leave a tip or gratuity or pay a service charge.
3. Recent public concern on this issue suggests that some tipping practices, particularly in the hospitality sector, may not be in line with the Code of Practice. It also suggests that some employers may be deducting excessive amounts from the tips, gratuities, cover and service charges left by customers (for example, more than the recommended administrative charge in the Government's Code of Practice to cover costs they incur in processing the payment). The Government wants to hear more about the arrangements employers have with their staff; workers' experience in the sector and whether customers feel informed about what happens to discretionary payments they make.
4. The Government would also be keen to hear about practices in other sectors and whether it is in line with the voluntary Code of Practice.

The purpose of this call for evidence

5. The purpose of this call for evidence is to build the Government's evidence base on current practice in relation to tips, gratuities, cover and service charges. The Government is particularly interested in the prevalence of different practices in relation to tipping – including admin charge deductions, the use of tronc¹ and charges falling to workers in relation to their sales, as well as the impact of these different practices on employers and workers. Finally, the Government welcomes views on its role in improving practice in this area and will consider whether there is action that can be taken to ensure that employers do not withhold from tips anything other than credit card administration and payroll charges.
6. The Government will assess the evidence collected through this exercise, and propose any further action to ensure fair and transparent practice in relation to tips, gratuities, cover and service charges.

¹ A Tronc is a system in which tips are pooled and the employer takes no part in deciding how the pool of tips is shared out between staff (for example, between public facing staff like waiters, and those who work behind the scenes, such as kitchen staff).

Guidance and legislative framework

Summary

- **The current legislative framework for the treatment of tips, gratuities, cover and service charges is set out.**
- **Cash tips given directly should belong to the employee, not the employer.**
- **There are no requirements for employers to pass on tips, gratuities, cover and service charges to their employees, where they are paid directly to the employer².**
- **Consumer protection law requires that customers should not be misled as to the way service charges are applied and distributed.**
- **The Government is seeking evidence on awareness and use of the current Code of Practice, which is voluntary and focuses on improving transparency for workers and customers.**
- **The Government is also looking at options to strengthen the Code and would welcome views on how this could be achieved.**

Legislative framework

7. Tips and gratuities paid to the employer (for example on credit card as a percentage of the bill), rather than to the worker, are the property of the employer. Whether the employer must pay some or all of those tips to the worker will depend on the individual employment contract. The employer may choose to pass on a proportion to a worker and may also choose to deduct a proportion (for example, as an administration or handling fee). These arrangements should be agreed as part of the worker's employment contract. If an employer tells the customer the money will be distributed to staff when it will not be then that may be a breach of the consumer protection regulations.
8. The legislation in this area relates to the treatment of tips, gratuities, cover and service charges in relation to the National Minimum Wage³, income tax⁴ and National Insurance contributions (NICs)⁵. The Employment Rights Act 1996⁶ also outlines that any withholding of tips to which an employee is contractually entitled to is an unlawful deduction from wages.
9. In terms of the National Minimum Wage (NMW), tips, gratuities, cover and service charges do not count for National Minimum Wage pay purposes. Workers must be paid at least the NMW for every hour worked before tips, gratuities, cover and service charges. HMRC enforces the NMW and has found limited evidence that NMW rules are being broken in regards to tipping, both from the complaints they have received and from the pro-active targeted investigations they have done in the hospitality sector.

² However, if an employer has agreed as part of the worker's employment contract to pay some or all of those tips to the worker then the employer must pass them on.

³ <http://www.legislation.gov.uk/ukdsi/2015/9780111127964>

⁴ <http://www.legislation.gov.uk/uksi/2003/2682/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/2001/1004/contents/made>

⁶ <http://www.legislation.gov.uk/ukpga/1996/18/contents>

10. The treatment of tips, gratuities, cover and service charges for income tax and NICs varies according to the method of payment⁷. Cash payments that a worker directly receives from a customer belong to the worker and it is their responsibility to inform HMRC for tax purposes. NICs will not be due on those payments. Non-cash payments and cash payments handled by the employer (such as a *tronc* where the employer allocates payments), belong to the employer. It is the employer's responsibility to ensure any proportion of the tip that they paid to the employee is included in PAYE calculations in respect of any income tax and NIC liabilities that may exist. In some instances although the employer has received the tips they take no part in how the tips are divided up amongst the employees. In this instance a '*tronc*' is established, and the responsibility for operating PAYE on the tips will fall to the '*tronc*master' who has been appointed, who may be another employee.
11. In addition to the treatment of tips, gratuities, cover and service charges, there are also protections for consumers. The Consumer Protection from Unfair Trading Regulations 2008 set out the principles that traders must adhere to in ensuring they act honestly and fairly in their commercial practices with customers, for example, by not making misleading statements or refraining from aggressive practices. The Consumer Rights (Payment Surcharges) Regulations 2012, which implement part of the Consumer Rights Directive, prevent traders from imposing "above-cost" surcharges on consumers in respect of the use of a given means of payment (such as excessive credit card fees).

Questions for consultation

A) As an employer / worker, are you aware of the law, set out in paragraph 9, in relation to the treatment of tips, gratuities, cover and service charges?

Yes

No

B) Do you know of any existing arrangements that you think contravene these rules?

Yes

No

C) If yes, please describe these arrangements.

Code of practice and customer awareness

12. The existing Code of Practice⁸ in this area is voluntary. It provides businesses with practical guidance on how to operate in a fair and transparent way and is aimed at ensuring consumers have sufficient information to make an informed choice before they leave a tip or gratuity or pay a service charge.

⁷ <https://www.gov.uk/government/publications/e24-tips-gratuities-service-charges-and-troncs>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/453089/09-1327-national-minimum-wage-code-of-best-practice-tips.pdf

13. The Code applies to all tipping sectors and was developed by trade unions, business representatives and consumer groups in 2009. It sets out four principles of transparency that businesses participating in the Code adhere to and provides practical guidance on how businesses can put these principles into practice. The four principles are:

- Businesses will clearly display on their premises prior to the point of purchase or choice their policy relating to mandatory and discretionary service charges, tips, gratuities and cover charges, and make this accessible.
- Businesses will have a process in place to deal with requests from customers about how and to whom all service charges, tips, gratuities and cover charges are distributed, and the level and purpose of deductions.
- Businesses should ensure that workers understand and are able to confidently explain the business' policy on service charges, tips, gratuities and cover charges to customers, or know where to direct customers for further information, and without risk of detriment.
- All workers should be fully informed on the distribution and breakdown of service charges, tips, gratuities and cover charges and the level and purpose of any deductions. Businesses should seek to reach agreement with workers on any change of policy.

Questions for consultation

D) Are you aware of the voluntary Code of Practice?

Yes

No

E) Do you think the Code of Practice provides a fair and transparent process?

Yes

No

F) If not, please provide details as to why not.

G) Do you / does your employer sign up to the Code of Practice?

Yes

No (if not, please provide details as to why not)

Not sure

H) If not, please provide details as to why not.

I) In practice do you / does your employer adhere to the principles in the Code of Practice?

Yes

No (if not, please provide details as to why not)

Not sure

J) If not, please provide details as to why not.

K) As a customer, do you leave a tip as a direct response to the service you receive?

Yes

No

L) If no, please provide details of your reasons for leaving a tip.

M) As a customer, are you, in general, aware of what happens to your tip?

Always

Sometimes

Never

N) If sometimes or never, what could be done to improve this?

Tips, gratuities, cover and service charges in practice

Summary

- **The Government wants to understand more about what happens in practice to tips, gratuities, cover and service charges – particularly in relation to those not paid in cash**
- **The Government also wants to hear from you if you have concerns about what happens when a customer leaves a tip in cash.**

Arrangements for passing on tips, gratuities, cover and service charges – non-cash and employer allocated tronc systems

14. There have been media and anecdotal reports of different arrangements or processes operated by employers in relation to handling non-cash tips, gratuities, cover and service charges. These include:
- The deduction of an admin charge prior to passing on the amount. Reports suggest that this varies from 2 - 10% and is used to cover legitimate costs falling to the employer. These costs might include a handling charge imposed by the credit card company, or payroll costs.
 - Use of a (discretionary) service charge, added to a bill, and kept entirely by the employer. In some cases, reports have suggested that employees are compensated through higher wages and are able to keep any tip paid above the service charge.
 - A charge levied on staff as a proportion of their sales during any shift. Reports suggest this can be around 3 - 5% and that employers expect the payment to be made from the tips received by a worker.
 - A tronc system is in place, whereby all tips, gratuities, cover and service charges are paid to the tronc master and distributed to all staff. The treatment of tips can vary within a tronc system, depending on whether the employer directly or indirectly allocates payments; or if the employer plays no part in the allocation process.
15. It is important that the Government understands the extent to which these arrangements are used and how they are organised by employers. It would also be helpful to understand any other arrangements that employers and workers have in place and how they operate.

Questions for consultation

O) Do you / does your employer operate any of the arrangements set out above?

Yes, deduct an admin charge (please state %)

- Yes, discretionary service charge retained by employer (please state %)
- Yes, charge levied on staff as % of sales (please state %)
- Yes, a tronc system is in place (please provide details)
- No, but other system in place (please provide details)
- No, all non-cash tips, gratuities, cover and service charges are passed on to the employee in entirety

P) Please provide further details to Question O as appropriate

Arrangements for passing on tips, gratuities, cover and service charges – cash

16. The Government is also keen to understand if there are any issues in relation to tips and gratuities paid in cash and whether action needs to be taken. The Government is clear that tips, gratuities, cover and service charges paid in cash to the employee should be kept in their entirety by the employee (except where an employer allocates payments within a tronc system in operation).

Questions for consultation

- Q) How do you treat tips and gratuities that are paid in cash?
- Retained by employee (please provide details)
 - Paid into a tronc system with allocated or input from employer (please provide details)
 - Paid into a tronc without allocation or input from the employer (please provide details)
 - Other (please provide details)

R) Please provide further details to Question Q as appropriate.

Customer awareness - Questions for consultation

- S) As a customer, do you prefer to leave a tip in cash or on card?
- Cash
 - Card
 - Don't mind

T) If cash / card, why do you prefer this method?

U) As a customer, what would you like to happen to your tips?

All to go to the worker

All to be handled and kept by the employer

All tips to be handled by the employer and distributed to individual workers (including admin fee deduction)

Tips to be shared and distributed amongst workers via a tronc, with allocation or handling by the employer (including admin fee deduction)

Tips to be shared and distributed amongst workers via a tronc, with no allocation or involvement from the employer

Other

Don't mind

If other, please specify.

V) Please provide any further evidence to support your views on tipping.

The role for Government

Summary

- **In light of the evidence collected through this call for evidence, the Government will consider whether action is required. We will consider whether there is action the Government should take to ensure employers do not withhold from tips anything other than credit card administration and payroll costs. We will also consider action to improve transparency.**
- **Views are sought on options to increase transparency of tipping practices, as well as what further action Government could take and the feasibility of these options.**

Government action to support employers

17. Following analysis of the extent of the issues surrounding tipping practices, the Government will consider what action it could take to ensure arrangements in relation to tips, gratuities, cover and service charges are fair for employers, workers and consumers.
18. The Government is committed to increasing transparency and ensuring that consumers can make informed choices about their actions. Views are also sought on whether there are other areas in which the Government could take action to improve tipping practices. We would like to hear from you if you think there are specific elements of the existing Code that need to be strengthened and how this might be done.
19. The Government would also welcome your views on what further action could be taken and the feasibility of such options. The Government will consider whether these options are appropriate, based on the information you provide, and may consult further on these if a problem is identified.

Questions for consultation

- W) Can you suggest any options which would be appropriate to tackle any issues identified in this call for evidence?
- X) What are the costs and benefits of these options?
- Y) What other risks and opportunities should the Government take into account when considering change in this area?

Next steps

20. Please use the space provided at the end of the response forms to provide any general comments that you may have. Comments on the layout of this consultation would also be welcomed.
21. The Government will collate and assess the evidence gathered through this exercise, and may undertake additional consultative processes. The Government will then evaluate the extent of the problem and publish information on what further actions it will take, if any, before undertaking a response.

How to respond

This call for evidence was issued on 1 September. Please respond by 10 November. Please send any enquiries to: labourmarket.consultations@bis.gsi.gov.uk.

You can reply to this consultation online at: <https://bisgovuk.citizenspace.com/lm/tips-gratuities-cover-service-charges>

Alternatively, a response form is available electronically here: <https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-call-for-evidence> (until the consultation closes). That form can be submitted by email or by letter to:

Labour Market Directorate
Department for Business Innovation and Skills
1 Victoria Street
London
SW1A 0ET
labourmarket.consultations@bis.gsi.gov.uk

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

The Government would welcome suggestions of others who may wish to be involved in this consultation process.

Confidentiality & Data Protection

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If a request for disclosure of the information is received, the Government will take full account of your explanation, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Comments or complaints on the conduct of this call for evidence

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk



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