



Department for
Business & Trade

DRAFT: Code of Practice on Fair and Transparent Distribution of Tips

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Foreword

The Secretary of State for the Department for Business and Trade (DBT) is publishing this Code of Practice to promote fairness and transparency in the distribution of tips that fall in scope of the Employment (Allocation of Tips) Act 2023. It comes into effect on 01 July 2024. This Code applies to England, Scotland and Wales and will be reviewed periodically to ensure it remains up to date.

Employers must have regard to the Code when designing and implementing their tipping policies and practices. It is recommended that all parties attempt to resolve issues locally in the first instance. Acas can support on mediation; seeking mediation will not prevent a worker from submitting a claim to an employment tribunal (ET) if they feel their employer has not acted fairly or transparently. Where relevant, judges have a duty to take this Code into account in determining disputes relating to tipping practices. However, failure to fully observe the Code does not in itself amount to proof that an employer has been acting unfairly.

Further non-statutory guidance will be published in due course to accompany this Code of Practice to help employers and workers interpret the legislation.

Introduction and Purpose

1. The purpose of the Employment (Allocation of Tips) Act 2023 (referred to as “the Tipping Act” in the rest of this document) is to ensure the fair and transparent allocation of all tips, gratuities and service charges. For brevity, “tips, gratuities and service charges” are referred to simply as “tips” throughout this document. The desired outcome of the Tipping Act is to improve fairness for workers by ensuring that the tips consumers leave in recognition of good service and hard work are going to the workers as intended. The Act aims to increase fairness in tipping practices and create a level playing field for employers who already allocate all tips to workers by ensuring that all employers follow the same rules.
2. The Tipping Act was granted Royal Assent on 2 May 2023. It amends the Employment Rights Act 1996 (“the 1996 Act”) so that employers are now required to:

- a. Pass on all tips and service charges to workers without deductions, except in very limited scenarios, such as deduction of income tax.
 - b. Ensure that tips are distributed in a fair and transparent manner when the employer takes control, or exerts significant influence, over their distribution.
 - c. Have regard to this Code of Practice on fairness and transparency of tip distribution when they are distributing or influencing the distribution of tips.
 - d. Maintain a written policy on how tips are dealt with at their place of business, and ensure this policy is made available to all their workers.
 - e. Maintain a record of all tips paid at their place of business and their allocation and distribution between each worker, to which workers have the right to request access.
3. The Tipping Act (see new section 27P of the 1996 Act) provides for the Secretary of State to issue a Code of Practice to promote fairness and transparency in relation to the distribution of qualifying tips, gratuities and service charges. This is referred to throughout the rest of the document as “the Code” or “this Code”.
4. The Code does not set out an exhaustive list of factors for employers to consider. Instead, it provides overarching principles on what fairness is for the purposes of the Tipping Act, the areas in which employers need to make decisions to comply with their duties, and how they should apply these principles in their specific places of business.
5. Some relevant provisions of the Tipping Act (as inserted as new sections of the 1996 Act) are re-stated briefly at the beginning of each section of this Code; where this is the case, these paragraphs are clearly labelled as “Provisions of Tipping Act”, with the other paragraphs labelled as “Explanation”. This is to distinguish between when text simply re-states the provisions of the Tipping Act to aid understanding, and when it seeks to facilitate fairness and transparency (which is a matter for the Code). This Code is structured as follows:
 - a. Scope: Qualifying Tips and Qualifying Workers
 - b. Fairness: Factors and Methods
 - c. Transparency
 - d. Addressing Problems

e. Glossary of Terms

Scope

Qualifying Tips

Provisions of Tipping Act

- 6. *The Tipping Act provides for how employers should deal with qualifying tips, gratuities and service charges and for the Secretary of State to issue a code of practice to promote fair and transparent distribution of these qualifying tips.***

- 7. *The Tipping Act defines “qualifying tips, gratuities and service charges” as employer-received tips or as certain worker-received tips. These terms are explained as referring to tips that are themselves either received by the employer, subject to the employer’s control or connected to worker-received tips that are subject to employer control (section 27C).***

Explanation

8. The method of payment (e.g. whether it is made by card, in cash or via an alternative method) does not determine whether a tip is a qualifying tip for the purposes of the Tipping Act and this Code.

9. Broadly speaking, the determining factor in whether a tip is qualifying or not is whether the employer receives (in the case of employer-received tips) or exercises control or significant influence over (in the case of worker-received tips) the distribution of tips. This is most commonly demonstrated when employers first receive the money and then allocate it to workers.

10. An employer is likely to have exercised control or significant influence over cash tips if they tell staff how to distribute cash tips or if they collect cash tips and distribute them at the end of a shift or as part of the regular payroll.

11. An employer is likely to receive a tip paid by card or via an alternative electronic method, for example through a mobile app or having scanned a QR code. This makes it an employer-received tip, for which they are responsible for distributing fairly.
12. Non-monetary tips can also be qualifying tips if they are received or controlled by the employer. A qualifying non-monetary tip could include a voucher, stamp, token, or similar item that has a fixed value which can be expressed in monetary terms or exchanged for money, goods or services. An example of a non-monetary tip could be a worker in a casino receiving a casino chip (which has a fixed value that can be exchanged) in place of a monetary tip paid by cash or card.
13. Not all tips are under the scope of the Tipping Act, and therefore subject to the guidance in this Code. If a worker receives and keeps a cash tip, with no employer control or involvement, the tip is out of scope for the Tipping Act and this Code.

Qualifying Workers

Provisions of Tipping Act

- 14. The Tipping Act provides that all workers are entitled to benefit from fair and transparent distribution of their qualifying tips. Employers must ensure that the total amount of qualifying tips paid at a place of business is allocated fairly between workers at that place of business and they should have regard to this Code when determining that (see new section 27D of the 1996 Act). The Tipping Act explicitly clarifies that this applies to eligible agency workers (new section 27H of the 1996 Act).***
- 15. Under the Tipping Act, an employer must ensure that the total amount of the qualifying tips, gratuities and service charges paid at, or otherwise attributable to, a place of business of the employer is allocated fairly between workers...at that place of business (new section 27D of the 1996 Act).***

Explanation

16. The Tipping Act applies to all workers. It does not apply to self-employed people.

17. Employers should apply the principles of fairness, set out in paragraphs 19-26 of this Code, to the allocation and distribution of tips between workers. This includes when there is a mixture of permanent staff, directly recruited staff, agency workers and zero hours contract workers in the same location.
18. Employers can promote fairness by ensuring that all individuals working at the place of business (whether employed or engaged by them directly or hired through an agency) are aware of and have clear access to all workplace policies that affect them. This includes the employer's written tipping policy, which they are required to have and make available to staff under the Tipping Act, unless they receive tips only occasionally and exceptionally. For example, a clothing shop which only receives tips from customers a few times a year would not need to have a written tipping policy.

Fairness

19. This part of the Code sets out the key principles of fairness for the purposes of the Tipping Act and the Code, and suggests how employers might wish to apply these to different aspects of developing and implementing a policy on how tips are treated. It will be for each individual employer to determine which specific principles best apply to their business. In the event of unresolved disputes, it is ultimately for employment tribunals to decide whether the employer has acted in compliance with the law.

Factors to Consider

20. Allocating and distributing tips fairly does not necessarily require employers to allocate the same proportion of tips to all workers. There may be legitimate reasons why employers choose to allocate different workers different proportions of tips.
21. Employers should use a clear and objective set of factors to determine the allocation and distribution of tips. The choice of factors should be fair and reasonable given the circumstances and the nature of the individual business.
22. Listed below are some of the factors which may be considered by employers, though this list is illustrative rather than exhaustive:

- a. Type of role/work e.g. distribution between front of house and back room workers
- b. Basic pay (and how workers are engaged)
- c. Individual and/or team performance
- d. Seniority/level of responsibility
- e. Length of time served with the employer
- f. Customer intention

23. Employers must avoid any form of unlawful discrimination when selecting and applying the factors for allocating and distributing tips. Employers must take extra care to avoid **indirect or unintentional discrimination**, which may be a risk when fewer tips are allocated to a group of workers which includes a disproportionate number of workers with a particular protected characteristic. Further detail, including some worked examples, can be found in the accompanying non-statutory guidance to this Code.

24. Employers should consult with workers to seek broad agreement in the workplace that the system of allocation of tips is fair, reasonable and clear, and the factors considered by employers must be stated in the tipping policy shared with workers. Employers must consider whether there may be legal or contractual requirements to engage in formal collective consultation where a tipping system affects terms and conditions around pay that are covered by a collective agreement with a recognised trade union, or an agreement made under the Information and Consultation of Employees Regulations 2004. More background on these regulations can be found at: <https://www.gov.uk/guidance/the-information-and-consultation-regulations>

25. An employer's approach to allocating tips should be reviewed on a regular basis in line with staff turnover and any wider changes to the organisation.

26. Particular employers may vary greatly in their business practices. If a particular method of distributing tips is considered fair by the workers affected by it, that may help a tribunal to conclude it to be considered fair and reasonable, provided it does not encompass direct or indirect discrimination. Staff support and agreement with a

method of distribution needs to be genuine and not coerced by managers or employers.

Methods of Allocation and Distribution (including troncs)

27. There are various methods by which tips can be allocated by an employer.
28. An employer may receive the tips directly and then pay workers their share of the tips as part of the next payroll cycle.
29. ***An employer can also choose to allocate and distribute tips fairly and transparently by using a tronc (new section 27F of the 1996 Act).*** Various tronc arrangements are permitted. An employer may directly appoint a member of staff to be responsible for allocating and distributing tips; and that member of staff can act as an independent tronc operator. An independent tronc operator may also be an external payroll or accountancy firm or alternatively a member of staff elected or agreed upon by the workers. Care is needed to maintain independence. Section 27F(6) of the 1996 Act provides further information on this.
30. If an employer chooses to appoint an independent tronc operator, the instructions or framework the employer sets for its operation must be in line with principles of fairness. If they do so, and they have a reasonable belief that the tronc is operating independently and fairly, the employer will be regarded as having complied with this Code of Practice.
31. However, if the employer later becomes aware of an independent tronc operator acting in an unfair or improper manner, they are obliged to act to address this in order to maintain a fair allocation of tips; this could involve instructing the tronc operator to change its operation, or replacing the tronc operator with an alternative operator, or terminating the tronc arrangement altogether. If the employer fails to act to address such a situation, they can be regarded as having failed to comply with this Code of Practice, and can face enforcement action i.e. being brought to an employment tribunal by a worker or workers if the arrangements made by the employer for allocation through a tronc are no longer fair (see new section 27F of the 1996 Act).

Provisions of Tipping Act

32. On handling tips, the Tipping Act states that ***employers must ensure that all tips are distributed to staff, at the latest, by the end of the month following the month in which the tips are paid by customers (section 27G)***. For example, if a customer leaves a tip on 23 June, it must be distributed by 31 July at the latest.

Transparency

Provisions of Tipping Act

33. ***The Tipping Act (new section 27I of the 1996 Act) sets out that the employer is required to have a written tipping policy when qualifying tips are paid at or are otherwise attributable to a place of business on more than an occasional and exceptional basis.*** The written policy should include how tips are accepted, how tips are allocated and distributed, and what steps the employer takes to ensure tips are handled fairly and transparently in accordance with the Tipping Act.

Explanation

34. An employer cannot be said to have met its obligation to handle tips fairly and transparently if individual workers are not aware of their entitlements in line with the tipping policy. This ensures workers can effectively challenge either the employer's tipping policy itself or its implementation, if they consider it to be unfair. Further information can be found in paragraphs 45-51 about addressing outstanding issues.

35. Employers are free to decide how to disseminate the written policy to their staff. They can choose to provide it in either electronic form or as a physical written document. If employers want to provide the policy electronically, they may email it directly to staff, upload it to a relevant staff portal or provide it to all workers in another suitable manner.

36. All staff should have the same access to the written policy. The policy must be written in plain language, and employers must provide an accessible format for any worker with a disability, on request.
37. Where agency workers are engaged, employers can provide those workers with a copy of the tipping policy themselves (electronically, or as a physical copy at the start of their engagement) or have the agency share the policy with the worker on their behalf.
38. If employers wish to provide physical copies of the policy, they may do this through a company induction when a worker joins. If they choose to do this, they should make sure that agency workers are not disadvantaged (and so left unaware of the policy) if they are not included in such scheduled meetings when brought in at short notice. Equally, if the employer chooses to display the tipping policy in a break room, they should make sure the agency worker is a) aware that it is available in the break room and b) able to have the same access to the break room as directly employed staff.
39. An employer may share their written tipping policy with customers or display it publicly if they wish, but this is not a requirement of the Tipping Act.
40. The Tipping Act also sets out requirements on employers for clear record keeping (new section 27J of the 1996 Act). These minimum legislative requirements on employers are necessary to support fairness and transparency.
41. Employers also need to consider how to ensure transparency (and by extension fairness) when there are updates to the tipping policy. The same principles and practical considerations as set out above apply. Consulting staff on updates to the policy is one way to ensure staff consider it fair and ensure transparency. All staff, however they are recruited and engaged, should be equally aware of any changes to the policy from the day they take effect.
42. A tipping record must include detail of all qualifying tips received by the employer at the place of business, and the amount allocated to each worker. This record must be

maintained for a period of three years beginning with the date on which the tip was paid.

43. A worker has the right to make a written request – limited to one request per worker in a three month period – to view the tipping record of their employer for a period dating back up to three years, provided they worked for the employer for the full duration of the requested period. An employer must provide their tipping record, including the total amount of qualifying tips received by the employer during the relevant period at the relevant place of business, and the amount allocated to the worker making the request.
44. The tipping records must be stored, processed and disposed of in line with data protection legislation, as defined in the Data Protection Act 2018 (see also new section 27J of the 1996 Act). The information provided to a worker upon their request must include the total amount of qualifying tips received by the employer at the relevant place of business, and the amount paid to that worker, but not the specific amounts paid to other workers.

Addressing Problems

45. An employer should ensure they have fair processes in place for resolving issues and responding to queries from workers who have not received the share of tips they expected to. For the purposes of fairness, employers should ensure they give equal weight to queries from agency workers as they do to their own, directly employed, staff. The Acas Code of Practice on disciplinary procedures (<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>) can be a useful tool for employers and workers.
46. If these internal processes do not successfully resolve the issues raised by workers, there are options for recourse.
47. A worker is required by section 18A(1) of the Employment Tribunals Act 1996 to contact Acas (the Advisory, Conciliation and Arbitration Service) in the first instance. In this event, a conciliation officer will attempt to resolve the issue and promote a settlement between the parties involved.

48. If the issues remain unresolved, under the Tipping Act a worker can enforce their rights through the employment tribunal system. This includes agency workers. The complaint may be based on a failure to comply with the requirements surrounding fair allocation and distribution, or the requirements surrounding the written tipping policy and tipping records, or both.
49. If an employment tribunal finds a complaint about fairness or transparency in tipping is well founded, it can make a public declaration to that effect. It will also be empowered to order the employer to revise a previous allocation of tips, make a non-binding recommendation on a previous allocation of tips, or order the employer to pay a worker or workers compensation. This can include other workers at the relevant place of business who have not made a complaint to the tribunal.
50. Further information about the employment tribunal process will be included in the non-statutory guidance to be published in due course.

Glossary

The definitions below are intended to aid readers' understanding of the Code, but they do not constitute the precise legal definitions. Readers should refer to the underlying legislation (where applicable) for the precise legal definition.

Agency Worker – an individual who is supplied to work temporarily for and under the control of a hirer (referred to in the Tipping Act as a principal) and has a contract with the agency that supplied them, not the hirer who they are providing their services to. For the precise definition for the purposes of the Tipping Act, see new section 27H(1) of the 1996 Act.

Basic Pay – the basic amount of money *guaranteed* to workers for working the set number of hours in their contract (if employed directly) or for working the duration of an assignment (if they are an agency worker). Tips are not considered to form part of the basic pay even if there is a contractual right to them, as this not a guaranteed amount. Indeed, since 2009, it has been **illegal for tips to be used to count towards minimum wage pay in the UK**.

Control – references to control in the Code refer to activity by an employer to influence the allocation or distribution of a tip. The question of control is relevant to whether a tip is a qualifying tip for the purposes of the 2023 Act. For the precise legal definition for the purposes of the Tipping Act, see new section 27C(5) of the 1996 Act.

Employee – typically someone who works under a contract of employment, which sets out their employment conditions, rights and responsibilities. For the precise legal definition, please see section 230(1) and (2) of the 1996 Act.

Employer-Received Tip – an amount paid by a customer of an employer by way of a tip, gratuity or service charge which is received upon its payment or subsequently by the employer, an associated person, or by a person under a payment arrangement made between the employer and that person. An example of an employer received tip, is if a customer paid a tip by card which went into the employer's bank account before being distributed to workers. For the precise legal definition, see new section 27C(3) of the 1996 Act.

Independent Tronc – a pooling system run by someone independent of the employer. This could be an accountancy or payroll business brought in to run the distribution of tips, or it could be a member of staff appointed by an employer elected or agreed upon by their fellow

workers. There are detailed requirements to meet the test of independence. For the precise definition, see new section 27F(6) of the 1996 Act.

Gift – a one-off reward that a customer may wish to make that is non-monetary. It will have a monetary value but cannot be divided or exchanged for cash, for example a bottle of wine.

Non-Public Place of Business – a physical business premises where customers will not receive service in person from those working for the business. Individuals working at a non-public place of business may fulfil corporate functions or provide remote customer support. For the precise definition, see new section 27E(3) of the 1996 Act.

Payment Arrangement – an arrangement between an employer and another person under which payments made by customers of the employer are to be received by the other person instead of the employer. For the precise legal definition, see new section 27C(9) of the 1996 Act.

Place of Business – a location where the function of the employer's business is carried out. These can be public or non-public and permanent or temporary premises. For the precise definition see new section 27X(1) of the 1996 Act.

Principal – a business for whom an agency has found a temporary agency worker. They may also be referred to as a hirer or end-client. For the precise definition for the purposes of the Tipping Act, see new section 27H(1) of the 1996 Act.

Public Place of Business – a business premises where customers interact with workers of the employer wholly or mainly in-person. For the precise definition, see new section 27E(3) of the 1996 Act.

Service Charge – an amount added to the customer's bill before it is presented to the customer. If it is made clear to the customer that the charge is a purely discretionary amount and there is no obligation to pay, the payment is a voluntary service charge.

Tip or Gratuity – a spontaneous payment offered by a customer. This can be in cash, as part of a cheque payment, as a specific gratuity on a credit or debit card payment or paid using a digital payment service or application.

Tippling Policy – a set of written guidelines, which must be produced by an employer and shared with workers, and which sets out the factors considered by that employer to determine the allocation and distribution of tips.

Tippling Record – a document which breaks down the total amount of tips received by an employer at the relevant place of business and the amount passed on to an individual worker. Every worker in the business must, on request, receive the record for their own employment.

Tronc – a common term for an arrangement used to distribute tips, gratuities and service charges. Many different specific arrangements exist, but in simple terms it refers to a common fund where tips left by customers are pooled before being distributed between workers.

Troncmaster – the person, other than an employer, who is responsible for arrangements to share tips among employees. However, the employer remains liable for the fairness and transparency of the scheme.

Wages – the overall amount the worker can expect to receive for a particular shift. This will be made up of the basic pay that the worker is guaranteed as well as any tips that they may be entitled to receive under the Act.

Worker – typically an employee or other person who has a contract to do work or provide services personally for a reward (monetary or a benefit in kind). For the precise legal definition please see section 230(3) of the 1996 Act.

Worker-Received Tip – an amount paid by a customer of an employer by way of a tip, gratuity or service charge which is received upon its payment by a worker of the employer and is not subsequently received by the employer or an associated person. For the precise legal definition, see new section 27C(4) of the 1996 Act.

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