

10 February 2009

Jenny Celaire
National Minimum Wage Unit
BERR
1 Victoria Street
London, SW1H 0ET

Response to consultation:

Fair Tips – consumers support a common sense solution

Dear Ms Celaire,

Responding to the government consultation on *Service Charges, Tips, Gratuities, and Cover Charges* Consumer Focus would like to express its support for what is really a common sense proposal. We strongly support the proposed changes to The National Minimum Wage Regulations 1999, namely that under no circumstances can mandatory and non mandatory services charges, tips and gratuities be used in payment of the National Minimum Wage. This proposed change in the legislation would improve clarity for consumers by eliminating loopholes and bringing the legislation into line with consumer expectations. We have conducted a representative survey to inform our response to this consultation and the results are unambiguous: 89 percent of British consumers agree that the tips they pay should not be used to raise level of pay to the National Minimum Wage.

We support the government in its view that greater transparency is fundamental in ensuring consumers are aware of how service charges, tips and gratuities are treated by business. Consumers have the right to know what happens to their tips and some businesses have already chosen to make customers aware of their tipping policy using a variety of methods (ranging from notification on menus, statements on company websites and stickers on doors). It is encouraging that according to government findings only a minority of businesses have in the past chosen to make use of the existing loophole. It is however worrying that government has found some evidence to indicate that the practice of using tips and service charges towards payment of the National Minimum Wage is more prevalent amongst medium and large sized employers, affecting close to 50,000 workers.

We support the proposal for a voluntary code of practice to foster the right kind of business culture across the leisure, hospitality and service sector. However, this needs to go beyond consumer information to address wider consumer concerns and the Unite Fair Tips Charter should form the basis for such a voluntary code. The Charter sets out four basic principles which Consumer Focus supports:

- All employees should be paid at least the National Minimum Wage with 100 percent of tips added on top as a bonus with no hidden charges.
- Employers should reach agreement on how tips are shared with those staff directly affected.
- No deductions from tips should be made to cover breakages, till shortages or customer walk-outs.
- Tips and service charges policies should be made available in writing to staff and customers on request.

Our survey shows that consumer expectations are overwhelmingly in line with these demands: 93 percent of British adults stated that they tip to reward good service and 94 percent said that the tips they pay should always go to the staff with no deductions by business owners. These expectations are in line with the tipping and service charge policies practiced by the majority of affected businesses. Self-regulation is a privilege, not a right, and should the voluntary code on best practice not lead to compliance across the industry on these practices we will press for legislative change.

The recent controversy surrounding tips and service charges has highlighted that there is a lack of openness:[†] no business should be embarrassed or reluctant to explain to its customers how service charges or tips are handled. Our survey tells us that 79 percent of consumers feel they should be able to read the tipping policy before they pay. Hence we would like the voluntary code on best practice to encourage all affected businesses to display their tipping and service charge policy at the point of sale. While we insist

[†] For example: According to The Independent "A waiter at a leading chain of restaurants in London, which started ratcheting up the share of service charges it took for itself to 90 per cent, was suspended for telling customers where their money was going. He cannot be named because his disciplinary case is continuing. "The majority of customers I told were shocked and didn't pay the service charge," he says. "[The management] said I had tarnished the company's image and they suspended me."" The Independent has also quoted Kumar Muthalagappan, founder and owner of Pearl Hotels and Restaurants Group, as stating that: "Service charges are for service, but it doesn't mean it has to go to the waiter – it could go to the company's profit and loss accounts and the waiter is paid out of it in wages. If they think it is unfair they can work for companies that offer a fairer deal." Asked if the policy is misleading to customers, Muthalagappan added: "I think it's very clear for the customer. It's nothing to do with the customer how the company's profits are distributed – it's got nothing to do with anyone what happens to the service charge. The customer who doesn't like the scenario can go elsewhere." ([The Independent, 15 July 2008](#))

that this information should not be buried in the small print or the company website, we do think that businesses are in the best position to decide how to most appropriately communicate with their customers. However, providing information to consumers is not a silver bullet and we would like to draw attention to previous work we have done in the area. [**WARNING! Too Much Information Can Harm**](#), published by the Better Regulation Executive and the National Consumer Council in 2007, sets out five tests that provide a guide for policy makers as to when and in what form information may be appropriate.

Yours sincerely,



Saskia Walzel
Policy Advocate
Fair Markets
Consumer Focus