



## **National Minimum Wage Service Charges, Tips, Gratuities & Cover Charges Consultation** **Unite Submission**

### **Introduction**

This submission is by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, food, agriculture, education, health, not for profit and of particular relevance to this consultation the hospitality and gambling sectors.

Unite is pleased to submit a response to the Department for Business Enterprise & Regulatory Reform (BERR) on its review of the National Minimum Wage (NMW) service charges, tips, gratuities and cover charges consultation. Unite considers the NMW to be one of the most important successes of the Labour Government. Its introduction and subsequent increases have not had any adverse effects on the labour market, whilst it has benefited millions of low paid workers.

Unite the Union has been campaigning for fair tips and in April 2008 joined forces with the Daily Mirror newspaper to launch a 'Fair Tips Charter' calling on businesses to adopt an ethical tips policy.<sup>1</sup> Put simply, bosses should pass on 100% of tips, service charges, gratuities and cover charges to staff and not use

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<sup>1</sup> Please see Appendix page 2 for a copy of the 'Fair Tips Charter.'

them to pay for wages, breakages or customer walkouts. Consumer Focus has also now joined the campaign.

### **The Consultation – The Problem**

Unite welcomes the commitment by Government to use secondary legislation to remove the current loop hole in the NMW Act 1999 c.39 and regulation section 31 (1)(e), which allows employers to use service charges, tips, gratuities and cover charges to count towards payment or part payment of the NMW.

However Unite believes that the proposal does not go far enough. For example option 1 in the consultation proposes “All tips, service charges, gratuities and cover charges, whether discretionary or mandatory, are excluded from counting towards the NMW, and consumer transparency and awareness is improved.”<sup>2</sup>

So what happens to the tips, service charges, gratuities and cover charges if workers are paid more than the NMW? As Unite currently understands the proposed legislative adjustment will do nothing to guarantee in law that employers can not use tips, service charges, gratuities and cover charges that have been left by the paying public, to pay workers who earn more than the NMW.

So the ownership of tips, service charges, gratuities and cover charges will still remain an area for businesses to exploit unless primary legislation is introduced to give workers 100% ownership rights over tips, service charges, gratuities and cover charges.

Unite fears that by not given workers 100% rights over tips, service charges, gratuities and cover charges that the public will still be misled about where the money they leave for workers is going. It will still allow businesses the freedom to take tips, service charges, gratuities and cover charges when paying workers above the NMW, which does not belong to them.

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<sup>2</sup> <http://www.berr.gov.uk/files/file48899.pdf>

Worse still it will give businesses the opportunity to perhaps pay lip service to the proposed legislative change by simply adjusting the way they report their accounts to make it look like they are not using the tips, service charges, gratuities and cover charges in paying the NMW. Many businesses have already boasted to our members that they will simply find another way of taking tips, service charges, gratuities and cover charges meant for workers and will hide it in the accounts.

So in order for greater transparency to prevail Unite wants primary legislation introduced to give workers 100% ownership rights over tips, service charges, gratuities and cover charges. This would rightfully give workers control of how they distribute tips, service charges, gratuities and cover charges amongst themselves and finally put an end to businesses taking workers money.

### **100% Ownership of Tips, Service Charges, Gratuities and Cover Charges**

Unite believes that 100% of tips, service charges, gratuities and cover charges belong to workers and are pleased to see such strong political support now saying the same.

Ian McCartney who was a Minister at the Department of Trade and Industry when the NMW was created has since admitted that there was a “compromise”. At the time behind the scenes, the hospitality industry was lobbying hard to ensure an opt-out for their bar and waiting staff. They won a loophole that allowed firms to use service charges and tips left on credit cards towards paying the NMW. On reflection Ian McCartney has recently expressed his disappointment that the Government allowed this loop hole to remain in the first place.

"I regret that some employers decided to use it in the way they have done," he said. "It was never intended that the Minimum Wage Act should be used in this way. A service charge is for service, to show the goodwill of the customer. It

should not be a contribution to paying wages, which should already be covered in the meal costs."<sup>3</sup>

Unite has been pleased to see BERR's commitment to closing this NMW loophole, when in July 2008, the then Secretary of State for BERR John Hutton announced plans to change the law so that "tips received by staff must be paid on top of the NMW, not as part of it".<sup>4</sup>

Even more recently Peter Mandelson Secretary of State for BERR has expressed within this consultation that "Our view is that tips should be paid to the worker on top of their pay and not be used to make up the NMW."<sup>5</sup>

Unite is delighted to say that the Primer Minster Gordon Brown has added his support to the "Fair Tips Charter".

"Hundreds of thousands of people work in jobs where customers leave tips for the staff in recognition of good service. It is right and fair that those tips go directly to the staff. It is not right that employers should use those tips to top up staff wages to minimum levels. By law, all workers are entitled to the minimum wage. If customers leave tips because they are happy with the service they have received, the staff should receive that extra money in addition to their salary, not in place of it, and certainly not to get them up to the minimum wage. It is also right that customers can feel sure that the money they leave in tips is rewarding the staff who earned it."<sup>6</sup>

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<sup>3</sup> [www.independent.co.uk/news/uk/this-britain/tipping-top-chefs-turn-up-the-heat-869750.html](http://www.independent.co.uk/news/uk/this-britain/tipping-top-chefs-turn-up-the-heat-869750.html)

<sup>4</sup> [www.mirror.co.uk/news/top-stories/2008/07/28/mirror-campaign-s-victory-on-fair-tips-for-waiting-staff-115875-20674257/](http://www.mirror.co.uk/news/top-stories/2008/07/28/mirror-campaign-s-victory-on-fair-tips-for-waiting-staff-115875-20674257/)

<sup>5</sup> <http://www.berr.gov.uk/files/file48899.pdf>

<sup>6</sup> <http://www.amicustheunion.org/pdf/guide%20to%20eating%20out%20Manch%20lowres.pdf>



Thanks to Consumer Focus commissioning YouGov plc to prepare a survey for the 'Fair Tips Campaign' we can now say that 94% of the public believe that the tips that they pay should always go to the staff with no deductions by restaurant owners.<sup>7</sup>

As for business the 'Fair Tips Charter' has demonstrated that there are businesses out there who are prepared to do the right thing. A list of the businesses who have signed up to the 'Fair Tips Charter' including two national chains (Pizza Hut and TGI Fridays) can be found at the fair tips website.<sup>8</sup>

Alasdair Murdoch, CEO of Pizza Hut UK says, "We're delighted to be the first supporter of Unite's and Daily Mirror's Fair Tips Charter. We think our staff should have an appropriate reward for providing excellent service, which is why

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<sup>7</sup> Please see Appendix page 3 - 8 for a copy of the survey prepared by YouGov plc for Consumer Focus for the 'Fair Tips Campaign'.

<sup>8</sup> <http://www.fairtips.org/>

we've always made sure they receive 100% of the tips given by customers. Tips are a way of saying thank you, personally; that's a great motivating factor for our staff and is not something any company should be profiteering from. We've been calling for an industry-wide commitment to pass on all tips directly to staff, as customers would expect. We hope this Charter is the first step to a national scheme, which recognises best practice amongst our industry."<sup>9</sup>

T.G.I. Friday's HR Director for the UK Gavin McGlyne says, "At T.G. I. Friday's all tips are paid to team members. Friday's doesn't take a single penny from their tips. We pay team members at least the minimum wage before any tips are taken into consideration. Our plan is to attract the very best people, train them well and then set them free to wow our guests and earn great tips. This results in us having fantastic waiters and waitresses across the country earning £30,000 or more per annum once tips are taken into consideration. We consider our staff to be the best in the business and they work their guts out every day to ensure that every guest at Friday's leaves happy - they deserve every penny they get."<sup>10</sup>

The Federation of Small Business (FSB) have said they welcome plans to close the loophole and that 99% of its members already passed on all tips to staff. The FSB Members believe it will have a positive impact on their business and are keen to create a level playing field between small businesses who pay a fair hourly rate and big companies who use tips to avoid paying wages."<sup>11</sup>

So the argument for 100% of tips, service charges, gratuities and cover charges is a strong one with support from the Government, Trade Unions, consumers - the general public, businesses large and small and the workers themselves. So clearly it is time to act!

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<sup>9</sup> [www.pizzahut.co.uk/restaurants/news/fair-tips-charter.aspx](http://www.pizzahut.co.uk/restaurants/news/fair-tips-charter.aspx)

<sup>10</sup> <http://blogs.mirror.co.uk/investigations/2008/04/tgi-not-all-restaurant-bosses.html>

<sup>11</sup> <http://www.fsb.org.uk/News.aspx?loc=pressroom&rec=4708>

## **The Consultation Questions**

The BERR consultation paper asks a number of specific questions. This section sets out Unite's responses.

### **Q1: We would welcome comments and views on the impact that changes to the legislation to exclude the use of mandatory and non mandatory service charges, tips and gratuities as an element of national minimum wage pay might have on business?**

Unite believes the negative impact on businesses will be minimal.

The Partial Impact Assessment (PIA) suggests that it will benefit between 4,500 to 44,800 workers.<sup>12</sup> The larger 44,800 estimate is only 0.15% of the total number of people in employment in the UK, which was 29.39 million for the three months to November 2008.<sup>13</sup> So the total overall impact to the UK economy is small.

In fact if anything there are many possible benefits to the changes which will include a level playing field for businesses to compete in. The Government must work to create a level playing field. Currently the small firms with less money are doing the right thing by their staff and giving them fair tips, whilst greedy big businesses are using tips and service charges to boost their profits.

On one side you have some businesses paying the NMW or above and given 100% of tips to the workers and then of the other side you have businesses who are paying below the NMW and are disgracefully using tips left by the paying public for workers to make up workers pay to NMW levels. Unite has discovered that many firms including well known national chains have jumped at the chance to slash wages down to £2 or £3 an hour before tips. In one case, staff received no salary just a share of the "discretionary" service charge added to bills.

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<sup>12</sup> <http://www.berr.gov.uk/files/file48899.pdf>

<sup>13</sup> [www.statistics.gov.uk/CCI/nugget.asp?ID=12](http://www.statistics.gov.uk/CCI/nugget.asp?ID=12)

This clearly places better employers at an economic disadvantage to businesses who are exploiting the loop hole in the law to the fall. So clearly amending the legislation could have a positive affect on creating a fairer market for all businesses to compete in.

Other potential benefits for businesses include an increase in the amount of people who would want to work in their industry. With a wider labour pool to choose from there is every chance that the standard of work could improve, due to workers greater motivation. As well as improving the retention of staff in these industries, which currently suffer from high turnover levels.

In addition there is an opportunity for businesses to improve their reputation not just with their workers but with their customers by operating fairer tip paying practices. However this isn't all about the benefits for business, there are benefits for the Government, the consumer and let's not forget the primary reason for changing the legislation the worker.

The Government can benefit financially through increased revenue received through worker and employer National Insurance Contributions (NIC's) estimated to be between £1.4m and £14m.<sup>14</sup>

Consumers benefit from knowing that the money that they leave for workers is being received by workers. This will help restore consumer confidence and will bring greater transparency to tipping practices.

The most important benefit would be for the worker who will finally receive the money that has been left for them by the paying public.

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<sup>14</sup> <http://www.berr.gov.uk/files/file48899.pdf>

**Q2: We would welcome comments on what impact changes to regulations might have on administrative processes and costs to business?**

Administratively Unite thinks the costs will be minimal.

After an initial outlay to adjust accounting practices Unite does not believe there will be any other significant administrative costs in incorporating the proposed changes. In fact administrative processes should become quicker due to the time that will be saved from previously needing to work out the difference between the basic pay and NMW, which won't be required anymore.

The costs to business will depend on how much companies have been exploiting the loop hole in the NMW Act in the first place. They will have to pay the difference from which they have been using tips, service charges, gratuities and cover charges to make up the NMW along with the employers 12.8% (NIC's) on that amount.

From the PIA estimates extra pay could be between £5.7m and £59.2m, extra NIC's could be between £0.7m and £7.6m and therefore total labour costs could be between £6.5m and £66.8m. In the table that follows on page 10 we can see some estimates on the average level of increased costs per company within their respected sectors.<sup>15</sup>

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<sup>15</sup> <http://www.berr.gov.uk/files/file48899.pdf> & [www.fame.bvdep.com/](http://www.fame.bvdep.com/)

Sector (SIC)	Total companies in that sector (Not all companies will be affected)	Estimated total increase in labour costs per annum (£m)	If 100% of companies were affected their average increase cost per annum	If 50% of companies were affected their average increase cost per annum	If 25% of companies were affected their average increase cost per annum
SIC 55 Hotels & Restaurants	56,706	51.77	£913	£1,826	£3,651
SIC 60.22 Taxi Operations	5,112	0.73	£143	£286	£571
SIC 92.71 Gambling & Betting Activities	2,068	2.2	£1,064	£2,128	£4,255
SIC 93.02 Hairdressing & Other Beauty Treatment	10,958	12.1	£1,104	£2,208	£4,417
	74,844	66.8	£893	£1,785	£3,570

Obviously it would be unrealistic to expect all companies within their selected sectors to be affected and again there will be variations between sectors, as there will be with companies who underpay by different levels at the moment. The table attempts to quantify potential increased costs on a company basis and clearly demonstrates that the annual level of costs on average, are not astronomical and should be affordable to business.

Any extra cost assessment can not be done in isolation it must also look at the profitability of these companies. It's obviously difficult to assess how the profitability of every company would be affected by the proposed changes. Again it depends on how much they have been delving into the tips, service charges, gratuities and cover charges in the first place because obviously if they have not been doing this then there will be no affect. In addition with regards to the sectors

affected not every company will have a tip, service charge, gratuity or cover charge element to the way they do business.<sup>16</sup>

All we can say is if the likes of Pizza Hut who made a £6.4m loss in the year to Nov 07 and TGI Fridays who made a £1.3m profit before tax in the year to Dec 07 can afford to sign up to the 'Fair Tips Charter'. Then it shouldn't be beyond a company of the stature of The Restaurant Group who recorded a £42.8m profit before tax in the year to Dec 07, who own Chiquito's, Frankie & Benny's, Garfunkel's, Bluebecker's and Edwinn's Brasserie and employ some 8,745 workers to sign up too.<sup>17</sup>

**Q3: We would welcome your views on adopting a sector code of best practice to achieve greater levels of consumer awareness in relation to the use and distribution of service charges, tips and gratuities?**

Unite, the Daily Mirror and Consumer Focus's joint "Fair Tips Charter" has obviously been a great success in highlighting the draconian practices of many businesses to the public and of course to the Government. So much of a success that many others are claiming that the campaign is theirs!

However, although Unite is delighted with the way the "Fair Tips Charter" has been received, the fact is that in the last year the industry has been given every opportunity to sign up to a voluntary code. The uptake has been minimal with only two national chains (Pizza Hut and TGI Fridays) signing up. In Unite's experience larger companies in general have been reluctant to put their name to a voluntary charter, which poses the question that without primary legislation, will a 'code of best practice' be another loop hole that business will use to take tips, service charges, gratuities and cover charges meant for workers?

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<sup>16</sup> Please see Appendix for a list of the affected sectors and companies taken from [www.fame.bvdep.com/](http://www.fame.bvdep.com/)

<sup>17</sup> [www.fame.bvdep.com/](http://www.fame.bvdep.com/)

It is proposed within the consultation that 'a sector code of best practice' is used to determine how to distribute tips, service charges, gratuities and cover charges fairly amongst workers. However, will businesses follow this 'code of best practice' if it isn't legally enforceable? If the conduct of the last 10 years is anything to go by then the answer is certainly no.

Therefore Unite can not accept for the industry to continue to regulate themselves. Since the introduction of the NMW the industry has had every opportunity to give their staff fair tips and there as been no indication that they want to introduce a transparent or fair tipping system. It is therefore unacceptable to Unite for a voluntary code to be proposed, as far as Unite is concerned this will not be in the interests of workers. Unite believes that primary legislation giving workers 100% ownership rights over tips, service charges, gratuities and cover charges is the only way to ensure a fair tipping system.

**Q4: We are open to innovative and imaginative plans to promote consumer awareness on service charges, tips and gratuities?**

As Unite has already stated we strongly believe that unless primary legislation is brought in to give workers 100% ownership rights over tips, service charges, gratuities and cover charges then the tipping system will still remain a grey area for consumers.

The consultation proposal does not go as far as what Unite is suggesting so there is a great danger that consumers will still be no clearer. At an absolute minimum it must be made a legal requirement for businesses in tipping industries to produce the rules on tipping (tips, service charges, gratuities and cover charges) in writing so workers and customers can see it. For customers this could go on a menu or price list. Then customers could attempt to decipher exactly how they can get through this minefield of trying to safely tip workers. Again if workers are not given 100% ownership rights over tips, service charges, gratuities and cover charges then customers can not be sure that what they have left for workers will actually get there.

**Q5: We would welcome your views on what the impact would be for employers and consumers if we adopted your recommendations?**

If primary legislation was introduced that gave workers 100% ownership rights over tips, service charges, gratuities and cover charges then employers, consumers and workers would all know exactly where they stand.

Employers would know that they needed to build their mark up into the prices of the goods/services that they sell. Employers would then be prevented from using tips, service charges, gratuities and cover charges or any other terminology that they choose to come up with in the future.

Consumers would then know that when they look at their bill that the amount they are asked to pay will go 100% to the employer and anything that they choose to give after that will go 100% to the workers.

Workers would finally be able to receive 100% of the money that has been left for them.

**Q6: We welcome your comments on this document and the impact assessment found at annex C, whether in response to particular questions raised in the document or more general responses to the issue?**

Unite would once again like to welcome this consultation and believe the impact assessment in annex C to be fair.

Other issues not covered so far include:-

**Workers being threatened with the sack if they don't put the credit card machine in customers faces**

The 'Fair Tips Campaign' has encountered examples of workers being ordered to encourage credit card rather than cash tips or face the sack. Why? Because the company was paying below the NMW and using credit card tips to top up

salaries. Workers keep cash tips, but a notice circulated to them makes clear it would prefer customers to leave credit card tips.

"It is essential that the customer is offered the opportunity to leave gratuity via chip-and-pin," says the notice. "Not offering this facility means you could be encouraging the customer to leave a cash tip." The notice goes on to state this could "contravene" company policy and "is likely to lead to disciplinary action and possible dismissal".<sup>18</sup>

One waiter was sacked for breaking this rule and his managers face disciplinary action. This unreasonable pressure must be stopped.

### **Workers tips being used to pay for breakages, till shortages or customer walk-outs**

The 'Fair Tips Campaign' has also come across examples of businesses using workers tips to pay for breakages, till shortages and one company produced a memo that revealed that staff must pay every time a customer leaves without paying the bill.<sup>19</sup>

These type of practices can not be allowed to continue.

### **Excessive 8-15% administration charges - Bosses taking a cut of staff tips**

Companies have been charging administration charges of anywhere between 8-15% on tips on credit cards. A Unite member Nabil Guirguis, 20 was fired for revealing the company keeps 8% of tips on credit cards as an "administration charge."<sup>20</sup>

These unaccountable deductions must be eradicated.

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<sup>18</sup> <http://blogs.mirror.co.uk/investigations/2008/06/restaurant-group-plc-threatens.html>

<sup>19</sup> <http://blogs.mirror.co.uk/investigations/2008/06/restaurant-group-plc-threatens.html>

<sup>20</sup> <http://blogs.mirror.co.uk/investigations/tag/tips/>

## **Conclusion**

In conclusion Unite believes that primary legislation needs to be introduced to give workers 100% ownership rights over tips, service charges, gratuities and cover charges. This goes further than excluding the use of mandatory and non mandatory tips, service charges, gratuities and cover charges as an element of NMW.

Independent tronc committees need to be run by workers not management. This would rightfully give workers control of how they distribute tips, service charges, gratuities and cover charges amongst themselves and finally put an end to businesses taking workers money.

At an absolute minimum it must be made a legal requirement for businesses in tipping industries to produce the rules on tipping (tips, service charges, gratuities and cover charges) in writing so workers and customers can see it.

Other deductions from tipping (tips, service charges, gratuities and cover charges) to cover breakages, till shortages or customer walk-outs must be stopped. It is Unite's believe that giving workers 100% ownership rights over tips, service charges, gratuities and cover charges could stop this.

Excessive 8-15% administration charges from tipping (tips, service charges, gratuities and cover charges) must be stopped. Again it is Unite's belief that giving workers 100% ownership rights over tips, service charges, gratuities and cover charges could stop this.