

Dear Sirs,

The British Hospitality Association represents the hotel, restaurant and catering industry. We are grateful to the Department for the opportunity to discuss the consultation and related issues with officials. We now respond to the consultation questions:

What is your connection to tipping practices? Business Representative Organisation: we represent hospitality businesses some of which receive (or whose employees receive) gratuities. We are a UK wide organisation.

- A) Awareness of the law: Yes. We were closely involved with HM Revenue and Customs in agreeing the taxation rules set out in HMRC document E24.
- B) Arrangements Contravening the Rules: No. Members contact us from time to time with queries about the National Minimum Wage and/or the taxation rules set out in E24. We are not aware of any contraventions.
- C) Not applicable.
- D) Voluntary Code of Practice: Yes, but please note that there are two separate codes dealing with transparency of information about company practices.. The Department's press release of 30 August states "While there is a voluntary code of practice which is overseen by industry body the British Hospitality Association..." The BHA does not oversee the Department's code of October 2009, which covers "all tipping sectors" including those outside hospitality.. The BHA issued a separate code in July 2009, a copy of which is attached.
- E) Fair and transparent process: Yes. We think both Codes (the BHA's and the government's) both provide a fair and transparent process or, more accurately, a number of processes. However, as noted below, we think that adherence should now be made compulsory.
- F) Not applicable.
- G) A number of BHA members and some non-members in the restaurant sector have signed up to the BHA code. However, we think that recent media and public comment, including on social media, has revealed that there is still some confusion about restaurants' legal entitlement to deduct administration costs from service charges. Because we think that it is important that customers understand exactly how much is deducted and why, we have proposed to the Secretary of State that transparency should be compulsory for all businesses in relation to service charge and non-cash tips.
- H) to L) Not applicable.

M) and N) If customers leave a cash tip, which the waiter takes, they will generally be unaware of whether the waiter retains the tip or pools it with those received by other staff. However, if they add a gratuity or pay a compulsory or discretionary service charge into the business, whether by card or in cash, they should have had the opportunity before ordering to

find out what happens to those sums. As indicated above, this can be achieved by making adherence to the principles in the BHA's 2009 code compulsory.

O) and P) We are aware of different hospitality businesses operating the arrangements described:

- Some deduct an administration charge, covering, in the words of the BHA code "credit card and banking charges, payroll processing costs, and the average costs of credit card fraud". We are aware of deductions of up to 10 per cent being made to cover these legitimate costs. However, we note that, following the recent press and social media comments, a number of restaurant chains have announced that they will no longer make these deductions.
- We are not directly aware of any business which retains the whole discretionary service charge so that the staff receive none of it. However, there were certainly some businesses which were following this practice in 2009 and there may still be some. The legal position is, of course, that these sums belong to the business. We believe that it should be compulsory to declare the practice so that customers could be fully informed of this before deciding whether to pay the charge.
- We are aware of cases where charges are levied on staff as a percentage of sales, that is, a percentage of tips received by a waiter will be given to the business to be distributed to non-waiting staff, who would otherwise not receive gratuities. This is a form of pooling arrangement.

Troncs are widely used so that service charges can be distributed more widely to the staff than is possible if customers leave 'cash on the table'. HMRC document E24 helps to facilitate this.

"No [tronc] but other system in place": other pooling arrangements may exist. These will need to comply with the rules on National Insurance in HMRC document E24.

The arrangement under which "all non-cash tips...are passed on to the employee in entirety" can operate either under a tronc system, with an independent troncmaster, so that the National Insurance exemption in E24 may apply, or may be passed at the employer's direction ("£x to person A", etc) in which case the National Insurance exemption does not apply.

Q) to V) Not applicable.

W) As stated above, the view of British Hospitality Association restaurant members, who met to discuss the issues raised by the consultation, is that transparency about what happens to non-cash tips, gratuities and service charges should be compulsory. We do not believe that there should be any change to the principle, established in the Nerva case in the European Court of Human Rights, that these sums belong to the business, which should not be required by law to distribute them in any particular way. Customers can decide, on the basis of the compulsory information we propose, whether or not to pay these sums or, indeed, whether to patronise the establishment in the first place.

X) The cost to businesses of complying would depend on what precise legislative requirement emerged. In our view, the requirement should be to include a statement on websites and in the premises, either by a notice on the menu or a notice on display. Providing the information on websites and by a single notice on the premises would be low cost. Providing the information on menus would require reprinting, but, if sufficient notice was given of the new law, this could be carried out when menus were next renewed anyway. The

number of establishments would depend on how many accept non-cash tips and how many impose compulsory service charges or suggest a discretionary service charge payment to customers.

There are an estimated 170,000 catering outlets in the UK (source: Horizons for 2011), excluding sites covered by contract catering arrangements, such as offices, factories, schools, etc, where we would propose that compulsory transparency would not apply. Of these, some 31,000 are quick service establishments where tips, etc, are generally not given or service charges common, and 45,000 are pubs, where the same generally applies. Many others will be cafes, where again non-cash tips will be rare. Overall, there could be, at most, some 100,000 establishments affected by the proposed compulsory provisions. Many of these will already be supplying information to customers in line with the 2009 code principles.

As indicated, there will be costs of providing the information at each establishment, which we think will be minimal. The benefits will be improved customer knowledge, more confident consumers, and the lifting of public suspicion, much of it unfounded, from the restaurant trade.

Finally, I confirm that we are content for this response to be made publicly available, and that we should be pleased to have further discussions with the Department on the issues raised in the consultation.

Yours faithfully,

MARTIN COUCHMAN
DEPUTY CHIEF EXECUTIVE