

Consultation Response

Make Work Pay: Strengthening the Law on Tipping

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the UK Government's Make Work Pay: Strengthening the Law on Tipping.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Make Work Pay: Strengthening the Law on Tipping](#)



Consultation Questions

Questions 1 – 40

These questions relate to workers, employers and customers. We have no comments.

Question 41 - To date, have you been aware of the statutory Code of Practice on fair and transparent distribution of tips, published by the Department for Business and Trade?

Yes – good understanding of the Code of Practice

~~Yes – I have heard of the Code of Practice, but I am unaware of the detail~~

~~No~~

~~Don't know~~

42. The government will be making some changes to the Code of Practice. Are there any areas of the existing Code of Practice which could be improved to be more helpful or clear?

Clarifying the situation with tipping apps

In its present form, the Code of Practice suggests at paragraph 11 that an app-based tip is likely to constitute an “employer-received tip, for which they [i.e. the employer] are responsible for distributing fairly”.

However, paragraph 13, suggests that “[d]igital tipping, whereby a customer uses an app to directly tip members of staff, bypassing the employer altogether, is also out of scope” of the legislation.

Additional clarification would therefore be beneficial to set out the circumstances in which an app-based tipping arrangement will be regarded as bypassing the employer altogether.

Clarifying the “occasional and exceptional” threshold

Both the written-policy and record-keeping duties hinge on an “occasional and exceptional” threshold being crossed. In its present form, the Code of Practice provides limited guidance on what constitutes “occasional and exceptional”.

Without clearer guidance, there is a risk of inconsistent treatment in practice, uncertainty for employers and workers, and avoidable disputes. Consideration could be given to including a non-exhaustive list of relevant factors or illustrative examples.



43. To date, have you been aware of the non-statutory guidance on distributing tips fairly, published by the Department for Business and Trade?

~~Yes – good understanding of the non-statutory guidance~~

Yes – I have heard of the non-statutory guidance, but I am unaware of the detail

~~No~~

~~Don't know~~

44. Are there any areas of the non-statutory guidance which could be improved to be more helpful or clear?

We have no specific suggestions at this stage. However, we suggest consideration could be given to ensuring that the non-statutory guidance addresses, or signposts, areas of practical uncertainty identified in the statutory Code of Practice, including app-based tipping arrangements and the application of the “occasional and exceptional” concept.

45. Would you like to see further guidance provided on any of the below? Please select all that apply.

Tipping policy guidance or template

Tipping record guidance or template

~~Template for requesting tipping record~~

~~Guidance on different branches of a business~~

~~Guidance on tips and agency workers~~

~~Guidance on consulting with trade union representatives or other worker representatives~~

~~Other (Please describe)~~

Standardised templates and targeted guidance in these areas would assist both compliance and understanding, particularly in sectors where agency labour and collective representation are common.

46. If you are a worker or worker representative, how confident do you feel about pursuing further action, such as through Acas or the employment tribunal system, to ensure the requirements on tipping are effectively and fairly applied?



Confident

~~Not confident~~

~~Unsure~~

~~Not applicable~~

47. Is there anything that could be improved in the process for pursuing further action, such as through Acas or the employment tribunal system, to ensure the requirements on tipping are effectively and fairly applied?

Given the typically modest sums involved, we suggest that stand-alone employment tribunal claims in respect of the tips regime should generally be subject to fast-track case management (with standard case management orders and a pre-listed final hearing communicated to parties at the stage of the ET1 and ET3). Such an approach would promote proportionality, reduce delay and cost, and support access to justice, while preserving appropriate judicial discretion to depart from fast-track arrangements where the circumstances of the case require.



For further information, please contact:

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