



Chartered Trading
Standards Institute

Government consultation on tipping, gratuities, cover and service charges

BIS consultation

Chartered Trading Standards Institute response

June 2016

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website (www.businesscompanion.info).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme (www.tradingstandards.uk/advice/ConsumerCodes.cfm).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 40% in their budgets since 2010 and staff numbers have fallen by 50% in the same period.

This response has been composed by CTSI Lead Officer for Fair Trading and Trade Descriptions, Martin Fisher. Should you have any queries or wish to discuss the response please do not hesitate to contact David at lofairtrading@tsi.org.uk

Chartered Trading Standards Institute
1 Sylvan Court, Sylvan Way
Southfields Business Park
Basildon, Essex, SS15 6TH
Tel: 01268 582200
www.tradingstandards.uk

Review of Retained Provisions of the Consumer Credit Act 1974

The Chartered Trading Standards Institute welcomes the opportunity to respond to this consultation. However, we do not feel we can comment on Option 2 as it refers to issues between workers and the businesses they work for, in matters of employment law and practice.

In CTSI's opinion, consumers understand 'tips and gratuities' to be voluntary payments made to table staff for good service. Cover charges and service charges should be understood as part of the contractual price of the meal, payable to the trader without any expectation that any of it will be given to staff, yet it is debatable as to whether consumers are aware that service charges do not generally get passed to waiting staff. It is very likely that in establishments levying any sort of service charge, customers will leave less in tips as they believe the service charge being levied against them contains some form of gratuity which will be passed by the establishment to the service staff.

Further confusion was introduced by industry use of the term 'voluntary service charge' from c.1990. The use of 'voluntary' was intended, not to alter the principle that the money went entirely to the trader (i.e. with no share going to staff), but to avoid payment of VAT on such charges by the trader. VAT was payable on mandatory charges but not on 'voluntary' (optional) ones. The trick was therefore to label the charge as voluntary, but to attempt to extract as near to 100% payment of the supposedly voluntary charge from customers as possible. Trading standards services took action against this as a deceptive practice when consumers were in practice given no real option on whether to pay the 'optional' charge.

CTSI believes that from a consumer perspective, service charges (whether labelled as voluntary or not), and cover charges, should not be confused with tips and gratuities, where consumers' expectations will be that they go 100% to workers. The consultation document does not appear to distinguish adequately between these categories. CTSI's view is that there is no justification for the practice of adding any percentage charge to the price of the dish or meal on a menu. Prices should be all-inclusive to ensure that consumers cannot miss the additional charge and thereby be misled, and to increase the ability of consumers to compare prices and thereby promote price competition between businesses.

CTSI therefore believes that there are major issues that serve to confuse the debate and which need careful consideration to ensure that any new regime properly addresses confusions and information deficits for consumers.

OPTION 1 QUESTIONS

See above for our concerns about confusion inherent in the use of the term 'discretionary service charges' if the true issue is the handling of tips and gratuities.

We support increased clarity for consumers on whether any charge is voluntary as long as this does not increase the confusion about who benefits from the charge. To be clear, voluntary service charges are likely to go to the trader, not staff. We therefore broadly support Options 1A and 1B.

On Option 1C, CTSI believe that consumers generally understand that cover charges go to the trader. On the grounds of price transparency and effective completion we would prefer that such charges are never imposed, but recognise that insofar as this is a *consumer* issue, the government's legislative options are restricted by the 'maximum harmonisation' principle of the Unfair Commercial Practices Directive.

OPTION 3 QUESTIONS

CTSI would prefer Option 3B, a statutory code of practice, if tax or employment law provides a basis for this (See above comment on restrictions imposed on consumer legislation by UCPD).