



Department
for Business
Innovation & Skills

**Government consultation on tipping,
gratuities, cover and service
charges**

May 2016

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Government consultation on tipping, gratuities, cover and service charges

1. There are some 150,000 businesses in the hospitality, leisure and service sectors where tipping is common. These sectors are an important part of our economy, employing some 2 million workers. Concerns have been raised about employer's treatment of these additional payments to workers; and the transparency of such practices to both consumers and workers.
2. The Government has previously worked with industry and worker groups to develop guidance for the treatment of tips, gratuities, cover and service charges¹. A voluntary Code of Practice² was published in October 2009 to improve the information available concerning the treatment of these payments and to increase transparency in this area. Following recent concern, the Government launched a Call for Evidence³ on 30th August 2015 to investigate issues raised.
3. The Government welcomed all submissions provided during this investigation and has considered wide ranging evidence from consumer, worker and employer groups. This consultation document sets out the Government's policy objectives with respect to cover charges and discretionary payments for service. We have outlined several proposals aimed at achieving the Government's objectives and we seek views on these.
4. Issued: 2 May 2016
5. Respond by: 27th June 2016
6. Enquiries to:

Labour Market Directorate
Department for Business Innovation and Skills
1 Victoria Street
London
SW1A 0ET
labourmarket.consultations@bis.gsi.gov.uk
7. This consultation will be particularly relevant for workers, individuals, the general public as consumers, businesses, employers, consumer representatives, labour providers, worker associations, trade associations and employment advisors who are affected by, or involved with, discretionary payments for service and cover charges. All consultation responses will be considered in the context of wider employment and consumer legislation and interests.

¹ For the benefit of proposals within this consultation, the Government will refer to tips, gratuities and service charges as 'discretionary payments for service'. Cover charges, which are comparatively much rarer and often mandatory, will be considered separately. These payments are typically in addition to the core business service and workers do not benefit from them.

² <https://www.gov.uk/government/publications/national-minimum-wage-code-of-best-practice-on-service-charges-tips-gratuities-and-cover-charges>

³ <https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-call-for-evidence>

Ministerial Foreword

Thanks to our long term economic plan 2 million new jobs were created during the last Parliament. Many of those jobs will belong to the hospitality, leisure and service industries, which already account for around 150,000 UK businesses, employing around 2 million workers between them.

These sectors include some of our most dynamic and exciting businesses, attracting some of our most enterprising people. They employ a wide range of workers with rich diversity of backgrounds, and will continue to help millions of people to get on in life.

Like many of us I was surprised to learn of claims that some employers, including some of our most well-known high street chains, were acting unfairly when it came to discretionary payments for service. Over the summer of 2015, media reports pointed to practices such as employers charging an administration fee for handling discretionary payments for service or even keeping the whole of these payments from those workers who had rightfully earned it.

In response to these reports the Government launched our Call for Evidence in August 2015 in order to better understand the underlying issues. Since then we have continued to hold discussions with our stakeholders in the business community and elsewhere, and have looked at detailed evidence from the nearly 200 respondents to our Call for Evidence. I am grateful to everyone who contributed their time and expertise to this important discussion. We have now considered the evidence and have put forward proposals for our next steps.

This current consultation document provides both a summary and response to the initial Call for Evidence, and also sets out proposals for further action to make tipping fairer. Underlying all our proposals are the objectives that all discretionary payments for service should be voluntary to the consumer; all discretionary payments for service should be received, in full, by workers where appropriate; and the allocation of such payments are transparent to the consumer who makes them.

We want your feedback on whether the Government's proposals, as set out in this consultation, will meet our objectives for fair, transparent and discretionary payments for service.

Sajid Javid

Secretary of State for the Department of Business, Innovation and Skills

Executive Summary

8. On 30th August, the Government launched an investigation in response to concerns surrounding the treatment and transparency of the payment of tips, gratuities, cover and service charges. This Call for Evidence sought to obtain evidence regarding current practices, as well as stakeholder views on Government's role in ensuring the fair treatment of these payments.
9. In particular, evidence was sought in relation to practices such as employers charging an administration fee for handling service charges; employers keeping the whole of a service charge; and employers charging workers a fee based on table sales. The Government also requested evidence regarding the current levels of transparency afforded to both consumers and workers.
10. We welcome the range of evidence provided through the investigation – amounting to 183 responses. We have considered the evidence and proposals put to us and have also held further discussions with worker and employer bodies to seek further information. The Call for Evidence initially focused on the hospitality sector but we also received evidence from other sectors where discretionary payments for service is prevalent, such as gambling, betting, hairdressing and taxi operators.
11. Analysis of Call for Evidence submissions indicates a broad agreement that intervention is required to improve the treatment and transparency of these payments. Consumers and workers were clear in the belief that all discretionary payments for service should go to the worker or be shared amongst workers without involvement from an employer. There was a consensus for greater transparency regarding the treatment of additional payments across worker, employer and consumer groups.
12. The Government will publish an Impact Assessment for these proposals during the consultation period. We are seeking responses to proposals to achieve the Government's objectives, including analysis of costs and benefits of each proposal.
13. This consultation provides both the Government's response to the Call for Evidence and proposals for further action. Having considered the issue and submissions to the investigation, the Government believes that all discretionary payments for service should be subject to 3 broad policy objectives. They should be:
 - Discretionary – clear to consumers that they are voluntary;
 - received by workers; and
 - clear and transparent to consumers and workers in terms of how the payments are treated.
14. The Government believes that action is necessary to ensure any future discretionary payments for service meet these policy objectives. This consultation sets out the following options for change to achieve those objectives:
 - 1) Ensure transparency to consumers that discretionary payment for service is just that – 'discretionary':

- Option 1A: The consultation asks for views on ways to ensure businesses make clear discretionary payments for service are just that - voluntary for the consumer;
- Option 1B: The consultation asks whether businesses should not be allowed to suggest a particular amount level of discretionary payment for service;
- Option 1C: The consultation considers the need for increased transparency regarding cover charges;

2) Ensure workers receive a fair share from discretionary payments for service.

- Options 2A, 2B and 2C: The consultation proposes options to prevent or limit the practice of additional charges on staff related to sales levels; and
- Option 2D: The consultation asks how well-managed tronc⁴ schemes can be encouraged which allocate tips across workers in a way which is agreed upon by the staff.

3) Increase transparency for consumers and workers regarding the treatment of discretionary payments for service. The consultation proposes options to:

- Option 3A: Update the current voluntary Code of Practice; and to
- Option 3B: Placing the voluntary Code of Practice on a statutory basis.

15. The Government will publish an Impact Assessment for these proposals during the consultation period. We are seeking responses to proposals to achieve the Government's objectives, including analysis of costs and benefits of each proposal. The closing date for this consultation is 27th June 2016. The Government will publish a summary of consultation responses and the next steps to be taken.

⁴ A Tronc is a system in which tips are pooled and the employer takes no part in deciding how the pool of tips is shared out between staff (for example, between public facing staff like waiters, and those who work behind the scenes, such as kitchen staff).

How to respond

16. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
17. You can reply to this consultation online at <https://bisgovuk.citizenspace.com/lm/government-consultation-on-tips-gratuities-a>
18. The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-proposals-for-further-action> (until the consultation closes). The form can be submitted online/by email or by letter or fax to:

Labour Market Directorate
Department for Business Innovation and Skills
1 Victoria Street
London
SW1A 0ET
labourmarket.consultations@bis.gsi.gov.uk
19. A list of those organisations and individuals who responded to the Government's Call for Evidence is in Annex D. The Government will contact all of those who responded to inform them of this consultation and request evidence. We would welcome suggestions of others who may wish to be involved in this consultation process
20. You may make printed copies of this document without seeking permission. Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

21. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
22. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential (if this is your position). If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
23. Help with queries. Questions about the policy issues raised in the document can be addressed to labourmarket.consultations@bis.gsi.gov.uk.

Background

Current treatment of tips, gratuities, cover and service charge

24. There is no legal requirement for the treatment of discretionary payments for service regarding the proportions that go to employers and workers. The appropriate legislative frameworks are in place for the National Minimum Wage, Income Tax, National Insurance Contributions (NICs) and Consumer Protection from Unfair Trading (see Annex B).
25. The Government's Call for Evidence requested information and views regarding employer practices towards the treatment of discretionary payments for service. Concerns were raised by media reports regarding 3 key employer practices:
- **Charge of Admin fees:** Employers charge workers a percentage of discretionary payments for service as a handling charge (usually ranging between 5 – 15% for admin costs). Often this may be to recoup costs incurred for payroll or other purposes; however there is a concern about the appropriate level that should be charged.
 - **Employer retains the whole service charge:** Alternatively, all of the discretionary payments for service are often retained by the employer. The value of payments retained is often over and above amounts charged to recoup costs incurred by the business.
 - **Workers required to pay back a % of table sales:** Reports suggests some employers raise a sales charge based on the sales a member of staff makes during a shift (ranging from 3% to 5.5%) rather than the discretionary payments for service received. Waiting staff are required to pay such a fee, which the business expects to be paid from the discretionary payments for service collected during a shift (and if these don't cover the charge, they must pay them from the subsequent shift). Employers have provided evidence to indicate that this rate goes towards non-waiting staff as a form of pooling; staff food and drink; recruitment; training; team activities; rewards and development.
26. Analysis of responses to the Call for Evidence indicates that there is confusion in the UK about the rules relating to tipping and other charges. There are currently a number of terms used to describe ways in which consumers make such payments:

Voluntary payments:

- **Tips and Gratuities:** A sum of money given in recognition of an individual's service provided, in addition to what is required of the consumer in a contract. This should usually be freely given (without claim or demand) and over and above a payment due for a core service (i.e. the price of menu items).
- **Service charge:** An amount which the business suggests to the consumer on a bill (often suggested as a percentage of the consumer's bill). The consumer is free to make the payment or not, however the Call for Evidence suggests consumers are unaware of this and feel obliged to pay the suggested amount. There is no current legal requirement for employers to pass on any of the service charge, in full or part,

to the workers. Many workers do not benefit from this directly; and its presence on a restaurant bill puts off many diners from leaving any other discretionary payment for service.

27. There are two mechanisms in which consumers can make these voluntary payments:

- **Cash:** Discretionary payments for service paid by means of cash payments, are payments which a worker usually directly receives from a consumer. They belong to the worker and it is the worker's responsibility to inform HMRC for tax purposes. National Insurance Contributions (NICs) will not be due on such payments.
- **Card:** Discretionary payments for service paid by means of card payments, are paid directly to and belong to the business - but they can choose to pass an amount onto to the worker. It is the employer's responsibility to ensure any proportion of the payments that are passed on to the worker is included in PAYE calculations in respect of any income tax and NICs liabilities that may exist.

Mandatory payments:

- **Cover charge:** A charge that any consumer must pay in addition to payment for the core service (i.e. the price of menu items). This is usually a price per head; is mandatory and should be stated on tariffs and menus. A consumer will choose whether to use the service with knowledge of this charge being applied. Many workers do not benefit from this directly; furthermore, its presence on a restaurant bill puts off many diners from leaving a tip or gratuity.

Application of terminology for this consultation

28. For the benefit of proposals within this consultation and for clarity, the Government will refer to tips, gratuities and service charges as '**discretionary payments for service**'.

29. Cover charges, which are comparatively much rarer and often mandatory, will be considered separately. The Government are of the opinion that cover charges are payments in addition to the core restaurant service (i.e. the price of the menu items) and workers do not benefit from them. The Government will not consider the treatment of cover charges as part of this consultation, but will consider options to improve consumer awareness of these payments within wider transparency proposals.

Outcomes from the Government's Call for Evidence

30. A total of 183 responses have been received during the Call for Evidence. A breakdown of the submission data can be found in Annex E. We have considered the evidence and proposals put to us and have also held further discussions with worker and employer bodies to seek further information. The Call for Evidence initially focused on the hospitality sector but we also received evidence from other sectors where discretionary payments for service is prevalent, such as gambling, betting, hairdressing and taxi operators.
31. Since the Government launched the Call for Evidence, a number of employers have changed, or shown intention to change, their tipping practices - particularly where their practices were identified in the media as exploitative. Many employers have announced plans to improve the information they make available to their consumers.
32. Analysis of key responses indicates a consensus that more transparency is required towards both the worker (in regards to how payments are treated) and the consumer (in regards to awareness of practices):
- Awareness of the Code of Practice for tipping varies between Employers (78%), Employees (41%) and Consumers (26%).
 - The view of whether the Code affords fairness and transparency follows a similar trend (Employers (67%), Employees (47%) and Consumers (39%)
 - Employees are less sure than employers that businesses sign up to (0% compared to 36%), and adhere to (12% compared 82%) the voluntary Code of Practice.
 - 38% of consumers said that they are never aware of what happens to their tips, with a further 58% saying they only sometimes knew where their money went.
33. On the whole, respondents believe that the onus should be on employers rather than the worker to make consumers aware of tipping policy. Respondents felt that the voluntary Code of Practice does not go far enough; is not widely used by employers; or should remain voluntary but include greater transparency.
34. From the Call for Evidence, 50% of respondents suggested that a change to the treatment of discretionary payments for service was required (either through employer practices or legislation). Worker groups called for a requirement for 100% of tips to be paid to workers. The majority of consumers would support this, with the Call for Evidence suggesting they would prefer to see all tips either going to the employee (61%), or shared in a tronc without any employer control (23%). Employers were more supportive of retaining the current treatment of discretionary payments for service; maintaining their flexibility to reward workers; but increasing the transparency of actions. Other respondents have suggested an entire ban on discretionary payments for service.
35. There is broad agreement that Government intervention is required to improve the treatment and transparency of discretionary payments for service. The objectives and proposed options within this consultation look to build on submitted suggestions during the Call for Evidence.

The Government's proposals

36. The Government is committed to making sure everyone is paid fairly. We want a fair deal on pay for working people which provides transparency for consumers, workers and employers alike. It is important that consumers are free to choose whether to leave discretionary payments for service and have confidence about what happens to the money they leave. Following analysis of the submissions provided during the Call for Evidence, the Government intends to take further action to uphold this commitment.
37. The sections below set out the Government's proposed options to achieve each objective, including information about how those options could be implemented. The consultation is focused on the hospitality sector and other sectors such as gambling, betting, hairdressing and taxi operators. However, the Government welcomes responses from any other affected sectors.

Option 1: Ensure transparency to consumers that discretionary payment for service is just that – 'discretionary'.

38. As set out earlier, there have been concerns that while discretionary service charges are, by their nature, discretionary for the consumer to pay or not, that is not always clear. While the consumer can ask for them to be removed, they can be presented in ways which make it unclear to the consumer that they have a choice.
39. The prevalence of numerous tipping practices has created a complex environment for consumers looking to reward good service. This has left consumers confused about different practices and unaware of their rights due to the lack of transparency. The presence of service charges on a consumer bill will often determine whether consumers leave any other discretionary payment for service to the worker. Alternatively, call for evidence submissions suggest that some consumers may be led to inadvertently pay a discretionary payment for service twice. This 'double tipping' may occur when a consumer first pays a service charge, which is only mentioned in the small print of a bill or menu, and then is drawn into leaving a discretionary tip when they come to pay (for example, the credit card machine actively asking if they want to add a gratuity).
40. Consumers said they wanted more clarity about the rules around discretionary payments for service. Employers agreed that further action should be taken to provide consumers with increased transparency, providing suggestions towards what this should include and how this may be achieved.
41. To help consumers understand that discretionary payments for service are exactly that, voluntary and at the consumer's discretion, the Government is seeking views on the following options:

Option 1A: Any suggestion of a discretionary payment for service must emphasise that this is discretionary for the consumer.

42. Under this option, the Government would allow business to suggest a discretionary payment for service of their choosing (i.e. suggest on a bill that the consumer may pay a fee towards the service provided). However employers would be required to be clear to the consumer that these suggested payments are voluntary (i.e. it is clear that it is the consumer's decision whether to pay suggested discretionary payments for service). Under this option, discretionary payments for service would remain as an 'opt out'⁵ decision for a better informed consumer.
43. The Government wishes to explore suitable methods to increase the transparency of business suggesting discretionary payments for service. We have outlined suggested methods to achieve Option 1A below. We welcome stakeholder views to these methods and any further suggestions towards achieving the Government's objectives under Option 1A.
- Ensure that businesses make clear on consumer bills that any additional payment on top of the final price for items purchase is discretionary.
 - Ensure that businesses mention any suggestion of discretionary payment for service on the consumer's bill (i.e. 5, 10 or 15% of the value of the bill). The consumer can consider paying all, some or none of this suggestion. This would not be totalled onto the final price and the consumer would be given the choice whether to pay the discretionary payment for service; and how they would like to pay it.
 - Ensure that two separate final prices are added to the consumer's bill. One being the final price for the items purchased; and the other being the price of items purchased plus a suggested discretionary payment for service. The addition of the discretionary payment for service would be clearly transparent.
 - Ensure clear information and signage to indicate discretionary approach to such payments, including mention of this on menus; websites; and points of entry.
44. The Government is aware that a consumer can often be given the option to pay discretionary payments for service using a card. This usually involves a question for the consumer about whether they would like to leave a discretionary payment for service. It is the Government's preference that this option of payment remains, providing that the business are clear to the consumer that they are discretionary (including clarity to avoid unintended double tipping by consumers). The Call for Evidence suggested that consumers were being offered card payment as the primary method of paying discretionary payments for service. Without changes to the treatment of discretionary payments for service (outlined in Options 2), this practice leads to less income going direct to the worker through cash payments. Under this option, the Government would explore methods to ensure the consumer would be provided

⁵ The consumer's motivations for tipping remain a behavioural 'opt out' as they are offered a suggested payment value towards discretionary payments for service. Consumers will have the ability to choose to opt out of paying such a sum.

with both cash and card payment options for any discretionary payment for service they wish to provide.

45. The Consumer Protection from Unfair Trading Regulations 2008 protects consumers from unfair commercial (mainly marketing and selling) practices. In addition to a general prohibition on unfair practices, the Regulations prohibit aggressive practices and misleading actions and omissions. The Regulations also contain a blacklist of certain commercial practices that are considered unfair in all circumstances.
46. As outlined under policy objective 3 below, the Government would consider use of an updated Code of Practice to give effect to any transparency options, as well as evaluating how relevant consumer law protections work to improve transparency and protection for consumers so that they have a clear understanding regarding discretionary payments for service.

Option 1B: Prevent businesses from suggesting any specific amount of discretionary payment for service.

47. The alternative would be to prevent businesses from suggesting any specific discretionary payments for service, e.g. 5, 10, 15%. In other words, there would be no mention on the consumer's bill of a suggested specific amount for a discretionary payment for service, other than that a discretionary service has not been added. The consumer may still decide to leave a discretionary payment for service without any prompt of a specific amount from the employer. Under this option, discretionary payments for service would become an 'opt in'⁶ decision for a better informed consumer, who would hold complete discretion towards making any such payment.
48. Discretionary payments for service, paid on card, would remain possible and voluntary under this proposed option, provided it did not suggest a specific level of discretionary payment for service during the process.
49. As outlined under policy objective 3 below, the Government would consider use of an updated Code of Practice to give effect to this option, in conjunction with evaluation of existing consumer law protections.

Option 1C: Increase transparency regarding cover charges

50. The Government is of the opinion that cover charges are payments in addition to the core service (i.e. the price of the menu items) but are part of the contractually agreed price and therefore mandatory to the consumer. A consumer will choose whether to use the service with the knowledge of this charge being applied, whilst workers do not benefit from them.

⁶ The consumer's motivations for tipping becomes a behavioural 'opt in' as they are not offered any suggested payment value towards discretionary payments for service. Consumers will have the ability to choose to pay a discretionary payment for service without any suggested sum.

51. Whilst treating cover charges separately to discretionary payments for service, the Government wishes to explore ways of making it clearer and more transparent that such cover charges are mandatory (i.e. clear messaging and signage explaining cover charges applied and indication that these are separate from discretionary payments for service). It is important that the consumer is fully aware of these charges before placing their order at a restaurant or agreeing to the service.
52. The Government would consider additional transparency options within any updated voluntary or statutory Code of Practice (under policy option 3) and welcomes views on what measures may help increase transparency for consumers on cover charges.

Questions for Options 1A, 1B and 1C

Question 7: Which option (or group of options) do you think best meets the Government's objective to ensure all discretionary payments for service are clearly seen as voluntary for the consumer? Please provide reasoning to support your response. (Max 500 characters).

Question 8: Do you expect the ability of consumers to make payments for goods and services by card would be affected by any of the proposals set out within Option 1? Please provide reasoning to support your response.

Question 9: Can you suggest any other options to ensure transparency to consumers that voluntary payments are discretionary? (Max 500 characters).

Question 10: Do you consider the current regulatory frameworks (Annex B) appropriate to enforce proposals to ensure that any suggestion of a discretionary payment for service emphasises that this is discretionary for the consumer?

Question 11: If no, what additional enforcement measures would you suggest? Please reference your suggestions to specific consultation options where possible (Max 500 characters).

Option 2: Ensure workers receive a fair share from discretionary payments for service.

53. From submissions to the Call for Evidence, it is clear that consumers wish their discretionary payments for service to be received by the worker. A large proportion of consumers (61%) stated a preference for the worker to receive all of the discretionary payments for service provided, or that they are shared in a tronc without any employer control (23%). However, responses to the Call for Evidence suggest that the general public do not fully understand the reasons why an employer might make deductions. More information is provided in Annex B on tax rules applying to the treatment of discretionary payments for service.
54. Further to deductions under tax law, it is clear from responses to the Call for Evidence that employers impose a range of administration charge levels on workers when handling discretionary payments for service. These admin fees are designed to cover the costs of payroll and credit card processing, but may also be used towards other employer costs, such as staff food and drink; recruitment and training; team activities and rewards. The Call for Evidence suggests that some employers charge workers between 5 – 15% of the discretionary payments received, whilst others do not charge at all. Further evidence provided from the gambling sector indicates higher typical administration fees of up to 15 – 25%. These charges are often set at a fixed percentage, regardless of how many discretionary payments for service have been received.
55. There was also strong support for restrictions on employer involvement in the processing of discretionary payments for service. This needs to be balanced alongside employer obligations under tax law and the laws relevant to discretionary payments for service paid by card (for which there is increasing demand). In particular, payments by card are received by the employer, with no current obligation for the employer to pass these on to the worker.
56. The Call for Evidence pointed to encouraging employer awareness of the current laws (under Annex B) and the voluntary Code of Practice. However, only 36% of employer respondents were sure that they followed the guidelines fully (with the remainder either not following or unsure if they were following). Employers agreed that further action should be taken to provide workers with increased transparency, providing suggestions towards what this should include and how this may be achieved.
57. The Government believes that all discretionary payments for service, after tax where appropriate, should be received by the worker; or managed separately from the employer through a tronc system. The following options outline possible approaches to achieve this objective, whilst ensuring they continue to be treated correctly for tax purposes.
58. An updated voluntary or statutory Code of Practice, as set out in Option 3, could be used to support this objective by ensuring increased transparency towards the worker. But the Government would like to consider options which go further than a code to provide greater protection to workers in terms of the deductions that can be made from discretionary payments for service.

Option 2A: Prevent any employer deduction from discretionary payments for service, except for those required under tax law.

59. Under this option, the Government would consider prohibiting employers from charging workers an administration fee or any other deductions than those required by the tax system. This prohibition would include those discretionary payments handled by the employer, banning employers charging workers for card handling fees and charges towards the completion of payroll administration requirements. The employer would incur the costs of these deductions or respond in other ways to cover these. The employer would still need to treat the payment correctly in terms of Income Tax and National Insurance Contributions.
60. Responses to the Call for Evidence from employers were clear that many seek only to deduct costs they face in administering service payments when allocating them to employees. The employer's role as an intermediary in handling discretionary payments for service is unavoidable when a consumer wishes to make payment via credit and debit cards. The Government would like to understand fully the implications of this option. In particular, if employers would seek to limit or change charging methods to consumers as a result of this option.

Option 2B: Limit the deductions from discretionary payments for service an employer can make.

61. As in Option 2A, employers would be able to make deductions when handling discretionary payments for service, but the Government would specify a limit to prevent deductions that exceed the cost incurred for credit card charges and processing the payment through payroll. This would be consistent with the current approaches taken by employers outlined above where a certain level of admin fee is charged. However, any limit set under this option would look to ensure that the employer does not profit as a result of making a deduction. The Government is seeking views on this option, as well as what charges might be permitted under it.

Option 2C: Ban or restrict the levying of table sales charges on staff.

62. Through the Call for Evidence, we were made aware of a separate practice whereby an employer charges the worker based on a proportion of their sales during a shift, with workers using any discretionary payments for service received to pay the employer. This is another method of applying a deduction from discretionary payments for service.
63. The evidence obtained during our investigation suggests that this practice does not take account of whether a worker has received enough discretionary payments for service to pay such a charge, often paying this charge out of their own pocket or future earnings. Employers state that this payment goes towards other employer costs, such as staff food and drink; recruitment and training; team activities and rewards. The Government would like to

understand more about the prevalence of this form of charging and views on whether further safeguards need to be placed around how it operates.

Option 2D: Incentivise and increase the prevalence of well managed tronc systems.

64. Submissions to the Call for Evidence suggest that the treatment of tronc schemes is a key area of concern for both workers and employers. Worker bodies largely believe that troncs are predominantly management controlled or manipulated, even if indirectly. There is evidence of employers taking admin fees and other deductions from troncs; whilst the involvement of employers may result in additional deductions from workers. For example, in the Call for Evidence, 22% of workers saw their cash payments handled by an employer allocated tronc scheme, attracting NICs payments on discretionary payments for service which otherwise would have been received in full by the worker. However, employers told us that the current guidance is too complex and that it places unfair requirements upon them.

65. A well developed and successfully managed tronc system can be used to achieve the consumer's intention of rewarding workers when leaving a discretionary payment for service and mitigate poor practice from both worker and employer angles. They may not be appropriate to all workplaces where there are discretionary payments for service being handled. However, the Government is interested in exploring ways to increase the prevalence of well managed tronc systems; including options to incentivise the use of a tronc system which is wholly independent from employers. We would like to gain stakeholder views regarding:

- a) An updated tronc guide (E24 guidance⁷). The Government would explore possible additions to the guidance including:
 - How a tronc committee should be elected, managed and remain accountable; with no employer input or control;
 - the ability for workers to elect their troncmaster
 - ensuring only relevant workers are eligible to hold the position of troncmaster⁸;
 - how all workers should participate in the tronc;
 - how discretionary payments for service paid by card can be distributed via a tronc;
 - how deductions are managed within a tronc system, in line with other proposal's under Option 2; and

⁷ <https://www.gov.uk/government/publications/e24-tips-gratuities-service-charges-and-troncs>

⁸ A troncmaster, under the Government's E24 guidance is a person, other than the employer, responsible for arrangements to share discretionary payments for service amongst workers.

- guidance for the troncmaster to consult with all staff before making any changes to the distribution of payments.

b) Placing tronc requirements on a statutory footing to ensure the desired treatment of discretionary payments for service by those employers using such a system. This would include the additions to the tronc guidance set out above.

66. Responses to the Call for Evidence also suggest that workers within tronc systems would benefit from additional accountability and protection rights. In particular, workers acting as troncmasters and making decisions on the distribution of discretionary payments for service should be protected in fulfilling their role. However, troncmasters should be held accountable to ensure the appropriate treatment of discretionary payments for service as agreed between the relevant parties.

Questions for Options 2A, 2B, 2C and 2D

Question 12: Which option (or group of options) do you prefer to meet the Government's objective to ensure workers receive a fair share from discretionary payments for service? Please explain your reasoning. (Max 500 characters).

Question 13: Can you suggest any other options to ensure workers receive a fair share from discretionary payments for service (Max 500 characters).

Question 14: Can you provide evidence to explain whether current handling deductions vary depending on the amount of discretionary payment for service, or a percentage charge? Please provide an explanation to explain why the current approach is adopted. (Max 500 characters).

Question 15: As an employer, can you provide evidence regarding the cost to employers of handling discretionary payments for service for tax purposes? Please support your response with breakdowns of costs incurred (Max 500 characters).

Question 16: Do you agree with the proposed E24 tronc guidance updates? Please provide reasoning or further additions to support your response (Max 500 characters).

Question 17: Which option for troncs (guidance or rules) do you think is most suitable to achieve the Government's stated objectives?

Question 18: Do you consider the current regulatory frameworks (Annex B) appropriate to enforce proposals to ensure that workers receive a fair share from discretionary payments for service?

Question 19: If no, what additional enforcement measures would you suggest? Please reference your suggestions to specific consultation options where possible (Max 500 characters)

Option 3: Increase transparency for consumers and workers regarding the treatment of discretionary payments for service.

67. The current voluntary Code of Practice provides employers with guidance on how to ensure their practices are transparent so that consumers have sufficient information regarding discretionary payments for service to make a decision. It is clear from the Call for Evidence submissions (from worker; employer; consumer backgrounds) that the voluntary Code of Practice is not widely used or understood; and fails to ensure a consistent level of transparency to the consumer or worker with regards to discretionary payments for service and cover charges.
68. A majority of consumers and employees (for whom the code is applied to) thought it did not provide a fair and transparent process. The Call for Evidence showed that consumers are also unclear about what the charge goes towards: whilst 90% of consumers who leave a discretionary payment do so as a direct result of a service provided, they are often unaware of how this is treated. Only 2% of consumer respondents stated that they were always aware of what happened to the discretionary payment for service paid. Workers provided evidence of low uptake to the voluntary Code of Practice, with only 12% confirming that their employer adhered to the principles of the code. Worker submissions provided a general picture of the lack of transparency and awareness of treatments provided by employers.
69. The current voluntary Code of Practice sets out principles, including that businesses ought to clearly display on their premises their policy relating to discretionary payments for service and cover charges; and that they have a process in place to deal with requests from consumers about how and to whom discretionary payments for service are distributed, including the level and purpose of deductions. It also sets out that businesses should ensure that workers understand and are able to confidently explain the business' policy on discretionary payments for service.
70. The Government are considering the mechanisms to achieve the policy proposals outlined within Options 1 and 2. This includes consideration of the continued use of the code to give effect to, or support any, of the proposals outlined within this consultation. The Government wishes to explore the benefits of updating or strengthened code to maximise transparency and the fair treatment of discretionary payments for service.

Option 3A: Update the voluntary Code of Practice.

71. Under policy option 3A, any application of the Code would be amended to include updated guidance and principles to reflect any of the changes proposed within this consultation. An update would also include the increased use of card payments; guidance on making clear statements for consumers including information prior to point of sale; a requirement for employers to maintain policies for workers; and annual statements for workers. A full list of the proposed updates to the Code can be found in Annex C.

Option 3B: Apply a Statutory Code of Practice.

72. The Government would like to consider the placing of any updated Code on a statutory basis. A statutory code itself would not impose specific legal obligations that could be directly enforceable by legal proceedings; but it would raise the status of the Code and it could be taken into account in any court or tribunal proceedings for the purposes of determining liability or sanctions in relation to related legal duties, such as requirements that may be introduced under policy options 1 and 2, or other relevant requirements in employment law or consumer law. It may therefore go further to encourage employers to adhere more to the provisions of the Code. As with the current voluntary Code of Practice, any misleading claims of adherence to the code by employers risks being in breach of the Consumer Protection from Unfair Trading Regulations 2008. The Government welcomes views on whether any updated code should be put on a statutory basis and what additional enforcement, if any, should be applied to this.

Questions for consultation

Question 20: Do you agree with the suggested updates (within Annex C) to the current voluntary Code of Practice? Please provide reasoning or further additions to support your response (Max 500 characters).

Question 21: Which option(s) outlined in this section (3A and 3B) do you consider would best support the proposals under Options 1 and 2 to achieve the Government's stated objectives? Please provide an explanation to support your answer (Max 500 characters).

Question 22: Do you have any evidence of the costs of complying with the current voluntary Code of Practice? If so please provide details (Max 500 characters).

Question 23: As an employer, do you estimate any additional costs in adhering to the suggested additions to the voluntary Code of Practice? (Max 500 characters).

Consultation questions

Option 1

Question 7:

Which option (or group of options) do you think best meets the Government's objective to ensure all discretionary payments for service are clearly seen as voluntary for the consumer? Please provide reasoning to support your response. (Max 500 characters)

Question 8:

Do you expect the ability of consumers to make payments for goods and services by card would be affected by any of the proposals set out within Option 1? Please provide reasoning to support your response.

Question 9:

Can you suggest any other options to ensure transparency to consumers that voluntary payments are discretionary? (Max 500 characters).

Question 10:

Do you consider the current regulatory frameworks (Annex B) appropriate to enforce proposals to ensure that any suggestion of a discretionary payment for service emphasises that this is discretionary for the consumer? (Max 500 characters).

Question 11:

If no, what additional enforcement measures would you suggest? Please reference your suggestions to specific consultation options where possible (Max 500 characters).

Option 2

Question 12:

Which option (or group of options) do you prefer to meet the Government's objective to ensure workers receive a fair share from discretionary payments for service? Please explain your reasoning. (Max 500 characters).

Question 13:

Can you suggest any other options to ensure workers receive a fair share from discretionary payments for service (Max 500 characters).

Question 14:

Can you provide evidence to explain whether current handling deductions vary depending on the amount of discretionary payment for service, or a percentage charge? Please provide an explanation to explain why the current approach is adopted. (Max 500 characters).

Question 15:

As an employer, can you provide evidence regarding the cost to employers of handling discretionary payments for service for tax purposes? Please support your response with breakdowns of costs incurred (Max 500 characters).

Question 16:

Do you agree with the proposed E24 tronc guidance updates? Please provide reasoning or further additions to support your response (Max 500 characters).

Question 17:

Which option for troncs (guidance or rules) do you think is most suitable to achieve the Government's stated objectives?

Question 18:

Do you consider the current regulatory frameworks (Annex B) appropriate to enforce proposals to ensure that workers receive a fair share from discretionary payments for service?

Question 19:

If no, what additional enforcement measures would you suggest? Please reference your suggestions to specific consultation options where possible (Max 500 characters)

Option 3

Question 20:

Do you agree with the suggested updates (within Annex C) to the current voluntary Code of Practice? Please provide reasoning or further additions to support your response (Max 500 characters).

Question 21:

Which option(s) outlined in this section (3A and 3B) do you consider would best support the proposals under Options 1 and 2 to achieve the Government's stated objectives? Please provide an explanation to support your answer (Max 500 characters).

Question 22:

Do you have any evidence of the costs of complying with the current voluntary Code of Practice? If so please provide details (Max 500 characters).

Question 23:

As an employer, do you estimate any additional costs in adhering to the suggested additions to the voluntary Code of Practice? (Max 500 characters).

Annex A: Consultation principles

73. The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles (<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>).

Comments or complaints on the conduct of this consultation

74. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET
Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk

75. However if you wish to comment on the specific policy proposals you should contact the policy lead.

Annex B: Current legislative framework in relation to discretionary payments for service and cover charges.

76. Legislative frameworks are in place for the National Minimum Wage, Income Tax, National Insurance Contributions (NICs) and consumer protection from unfair trading (Figure 1). There is no specific statutory requirement regarding how discretionary payments for service should be divided between employers and workers. The following frameworks are particularly relevant with regards to discretionary payments for service:

- The tax legislation relating to arrangements to share tips is contained within Regulation 100 of Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003 No.2682)⁹. This regulation covers the situation where an arrangements exists for discretionary payments for service to be shared among workers by a person who if not the principle owner.
- For NICs purposes the legislation relating to ‘gratuities and offerings’ which can be disregarded from liability when calculating earnings is contained at paragraph 5, Part 10, Schedule 3 of the Social Security (Contributions) Regulations 2001 (S.I. 2001 No. 1004)¹⁰.
- The Consumer Protection from Unfair Trading Regulations 2008 protect consumers by prohibiting unfair commercial practices. In particular, traders are prohibited from misleading consumers in the way they provide (or fail to provide) information if such actions/omissions are likely to cause an average consumer to take a purchasing decision they would not otherwise have taken¹¹.
- The national minimum wage legislation relating to discretionary payments for service that do not count for national minimum wage pay purposes is contained at Regulation 10(m) of the NMW Regulations 2015¹².

77. Figure 1 overleaf outlines how tips, gratuities, services charges and tronc are treated currently for VAT, Income Tax, National Insurance Contributions (NICs) and NMW purposes under UK legislation.

78. It is likely that the current avenues for redress will continue to apply to the relevant areas of legislation. For example, if the issue related to non-compliance with consumer transparency and therefore it was a consumer protection issue, then it is likely that Trading Standards expertise would continue to be the best way to enforce compliance. The organisation responsible for that area of law will be best placed to identify a problem, understand the best way to address it and take the appropriate action.

⁹ http://www.legislation.gov.uk/ukxi/2003/2682/pdfs/ukxi_20032682_en.pdf

¹⁰ http://www.legislation.gov.uk/ukxi/2001/1004/pdfs/ukxi_20011004_280215_en.pdf

¹¹ <http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

¹² <http://www.legislation.gov.uk/ukdsi/2015/9780111127964>

Figure 1: Current treatment of tips, gratuities, cover and service charges.

Type of tip payment		Treatment applied under current legislation			
		VAT	Income Tax (Under PAYE)	National Insurance Contributions (NICs)	NMW
Non-cash (to the employer)		<p>Tips are outside of the scope of VAT when genuinely freely given / are optional.</p>	<p>Income Tax applies. PAYE must be operated on all tips paid by an employer to an employee (submitted by employer on their PAYE returns).</p> <p>Any money deducted before the tips are distributed to the employee should be declared as a companies income (i.e. money not paid to the employee). The company may claim that the admin fee is a legitimate overhead at a later date.</p>	<p>If the employer directly or indirectly allocates any gratuity payments by deciding which employees should receive them and how much each should get then primary and secondary Class 1 NICs will be due.</p> <p>If however the employer plays no part in allocating the payment then no Class 1 NICs will be due. The payment will be disregarded from the employee's earnings for Class 1 NICs purposes by Para 5, Part 10, of Schedule 3 to the Social Security (Contributions) Regulations 2001.</p>	<p>From 1 October 2009, tips are prevented from being counted towards NMW calculations .</p>
Tronc	Non-cash (to the employer)		<p>Restaurant service charges are part of the consideration for the underlying supply of the meals if customer are required to pay them and are therefore standard rated (must be paid).</p> <p>Income Tax applies. Collected via PAYE (deducted by Troncmaster if role accepted and set up correctly and if so payment of tax made to HMRC separately from the employer). This can remain a responsibility of the employer if tronc scheme not set up correctly.</p> <p>Where an employer, BP or official of the company performs the role of the troncmaster, they are considered to be making payments as if they are the employer. Payments should be paid through the employers' payroll.</p> <p>Any money deducted before the tips are distributed to the employee should be declared as a company's income (i.e. money not paid to the employee). The company may claim that the admin fee is a legitimate overhead at a later date.</p>	<p>If a tronc is set up and operated correctly then gratuities, or payments treated as gratuities, passed on to employees by the troncmaster will not attract a Class 1 NICs liability if the employer has not directly or indirectly allocated payment to employees by deciding who should receive payment and how much they should get. The payment will be disregarded from the employee's earnings for Class 1 NICs purposes by Para 5, Part 10, of Schedule 3 to the Social Security (Contributions) Regulations 2001.</p> <p>If a payment made through a tronc does attract a primary and secondary Class 1 NICs liability (including any share of compulsory service charges which always do) then the employer is responsible for calculating and making payment to HMRC.</p>	

	Cash		As with non-cash, income Tax applies. Collected via PAYE (deducted by Troncmaster and payments made to HMRC separately from the employer). This can remain a responsibility of the employer if tronc not set up correctly.	As above.	
Cash (to the employee)			Income Tax does apply but tax is not collected through PAYE as the employer / troncmaster has no sight of tips. Individual staff will usually have a deduction made in their tax code which will equate to the likely amount of tips they will receive (based on an estimate provided by the employee).	No Class 1 NICs liability is due on gratuities received by an employee direct from a customer. The payment will be disregarded from the employee's earnings for Class 1 NICs purposes by Para 5, Part 10, of Schedule 3 to the Social Security (Contributions) Regulations 2001.	

Annex C: Suggested updates to a voluntary and statutory Code of Practice

The current voluntary code of practice is applied on a voluntary basis. It provides employers with guidance on how to ensure their practice is transparent so that consumers have sufficient information regarding discretionary payments for service to make a decision. It is clear from submissions to the Call for Evidence that the voluntary Code of Practice is not widely used or understood; and fails to ensure a consistent level of fairness and transparency around the treatment of discretionary payments for service and cover charges.

As a result of the evidence provided, we propose the following updates to the voluntary Code of Practice:

- Updated guidance to reflect the increased use of card payments: ensuring that this method of payment is clearly voluntary to the consumer; and it is clear who receives such a payment.
- The requirement for employers to maintain readily available written policies for workers: including what such policies should contain and how they should be made available to workers.
- Guidance on information that should be provided to consumer: including the business policies set out above.
- Guidance on how consumer information and statements should be made available on websites, menus and other areas prior to point of sale.
- Annual statements for staff to communicate information, including;
 - What, if any, deductions are made.
 - The difference between cover charges and discretionary payments for service.
 - The value of discretionary payments for service collected;
 - How they are dealt with.
 - Who deals with them?
 - Ad-hoc statements to reflect any consulted changes to discretionary payments for service, i.e. changes to tronc committee, troncmaster or other relevant party.
- Information regarding the treatment of tronc systems: as provided within policy option 2D.
- With whom liability towards tax law applies under any finalised options.
- Any protection rights for workers: including what rights workers and consumers have to request information from a business.
- That discretionary payment for service does not contribute to either the National Minimum Wage or National Living Wage.

Annex D: List of Individuals/Organisations consulted during the Call for Evidence

The named organisations below responded to the Call for Evidence on tips, gratuities, cover and service charges. We also received 166 responses from individuals across worker, employer and consumer backgrounds. The Government will contact all of those who responded to inform them of this consultation and request evidence.

The Chartered Institute of Payroll Professionals (CIPP)

Trades Union Congress (TUC)

The Association of Licenced Multiple Retailers ALMR

British Beer and Pub Association

Money Saving Expert

Unite the Union

Which?

Chartered Trading Standards Institute

Mazars LLP

Cote Restaurants

British Hospitality Association

WNT Troncmaster Service Ltd

GMB

Deloitte

Disruptive Analysis Ltd

Oakman Inns & Restaurants Ltd

Good Life Group Ltd Barworks Ltd

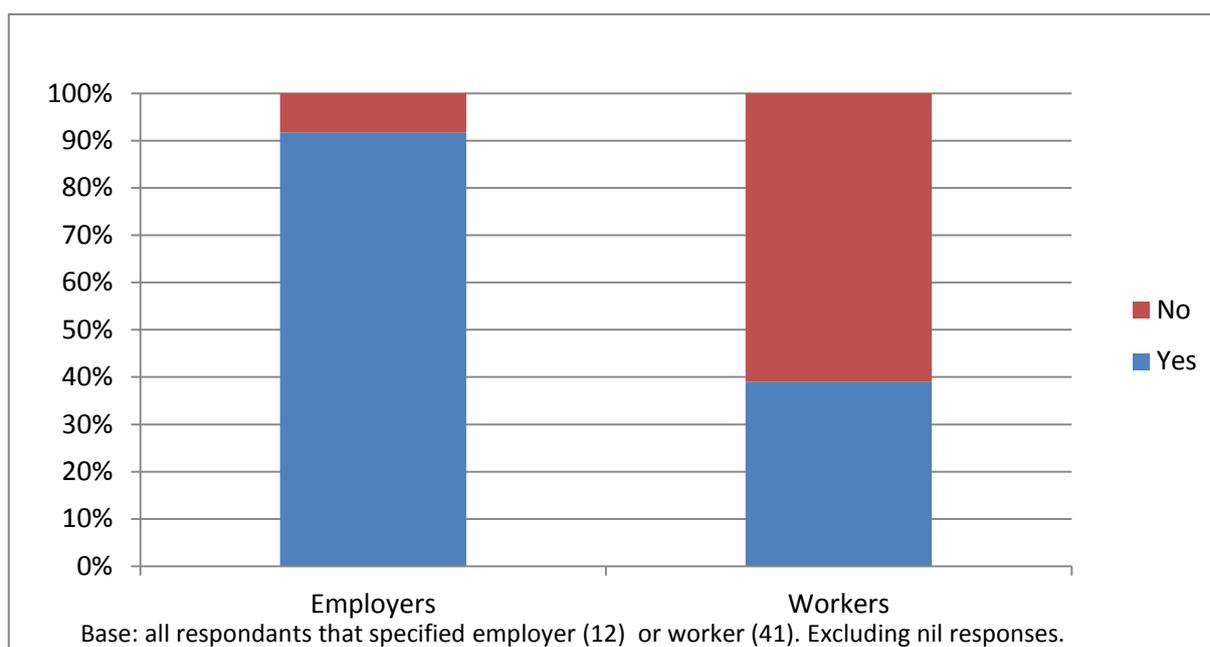
Annex E: Call for Evidence responses

Figure 2: Distribution of responses to the Call for Evidence on Tips, Gratuities, Cover and Service Charges

Responder type	Number of responses	% of responses
Worker who receives or collects tips	49	27%
Employer	13	7%
Customer	91	50%
Other (including unions and trade bodies ¹³)	30	16%
Total	183	

Summary of online responses to Call for Evidence questions

Figure 3: Question A) As an employer / worker, are you aware of the law, set out in paragraph 9, in relation to the treatment of tips, gratuities, cover and service charges?



¹³ This includes unions and trade bodies from both worker and employer backgrounds.

Figure 4: Question B) Do you know of any existing arrangements that you think contravene these rules?

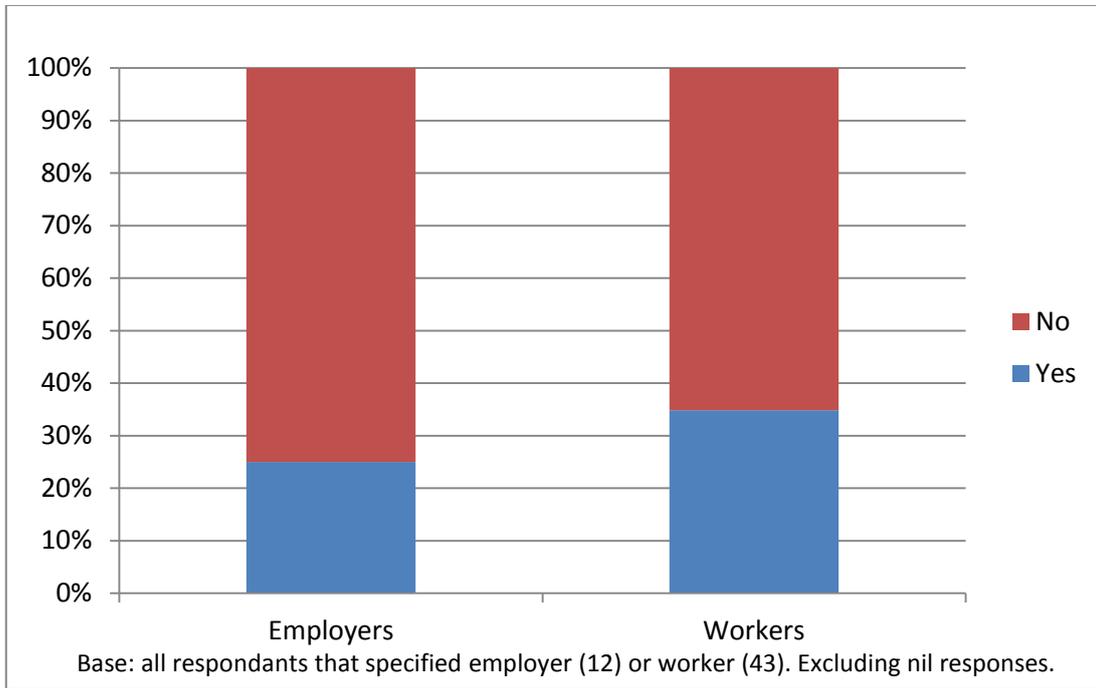


Figure 5: Question D) Are you aware of the voluntary Code of Practice?

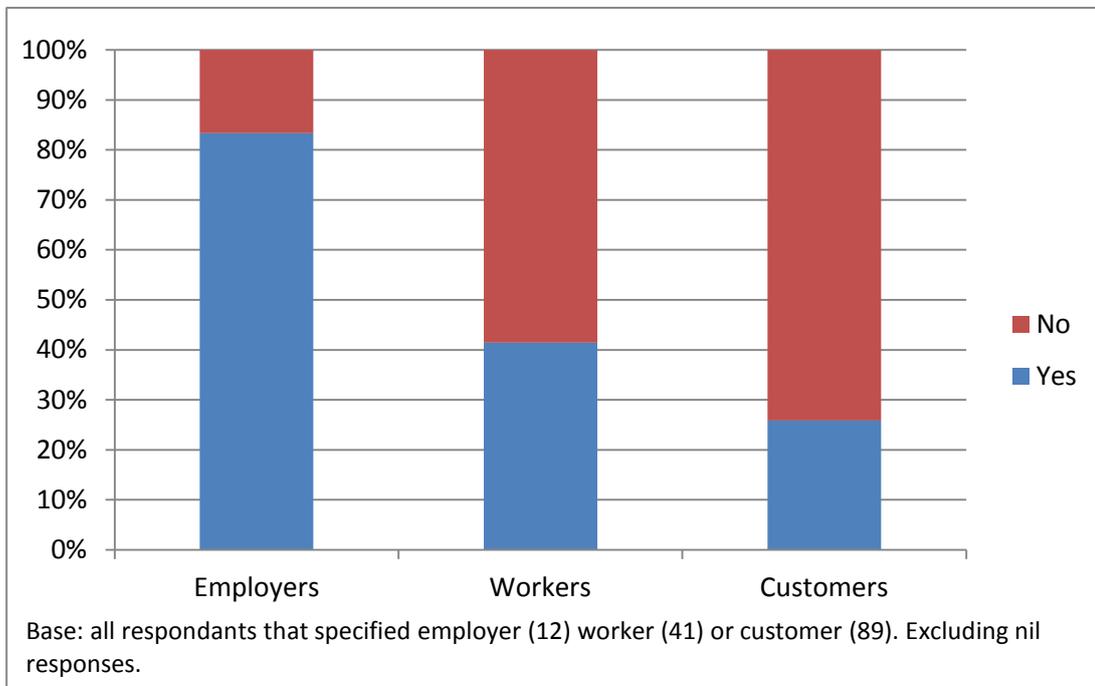


Figure 6: Question E) Do you think the voluntary Code of Practice provides a fair and transparent process?

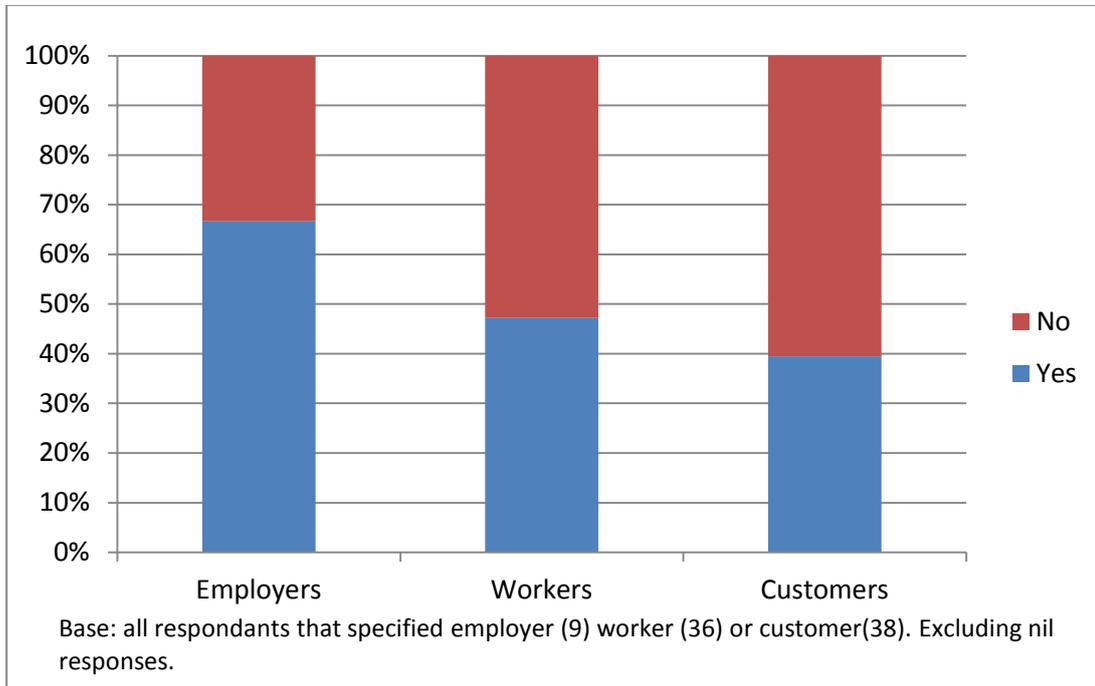


Figure 7: Question G) Do you / does your employer sign up to the voluntary Code of Practice?

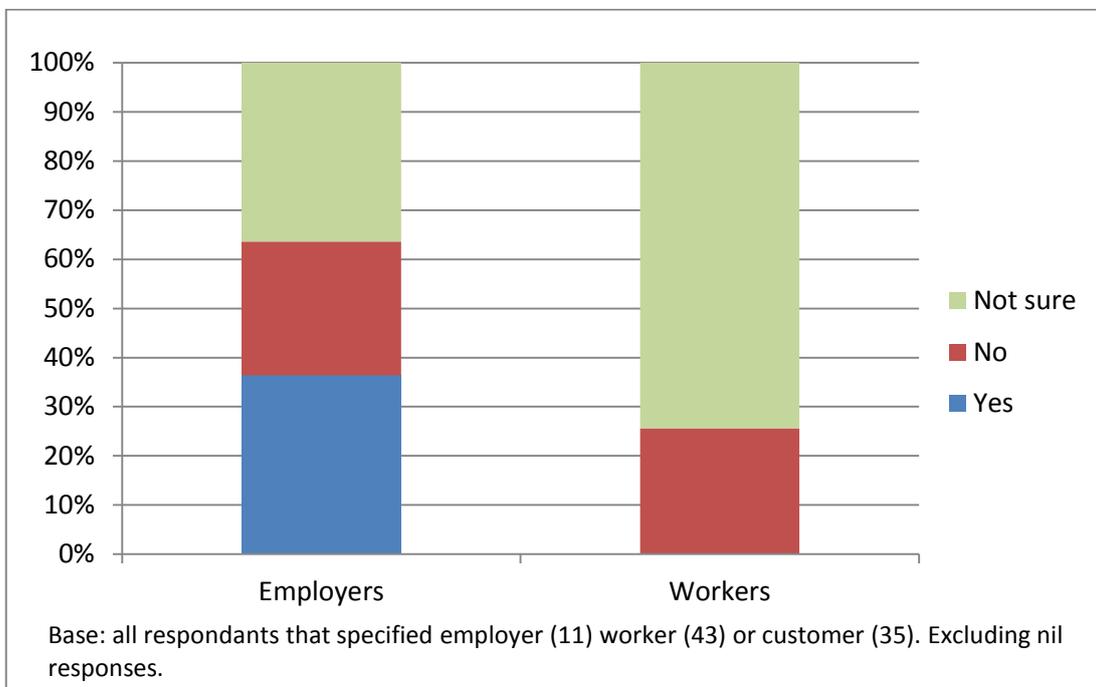


Figure 8: Question I) In practice do you / does your employer adhere to the principles in the voluntary Code of Practice?

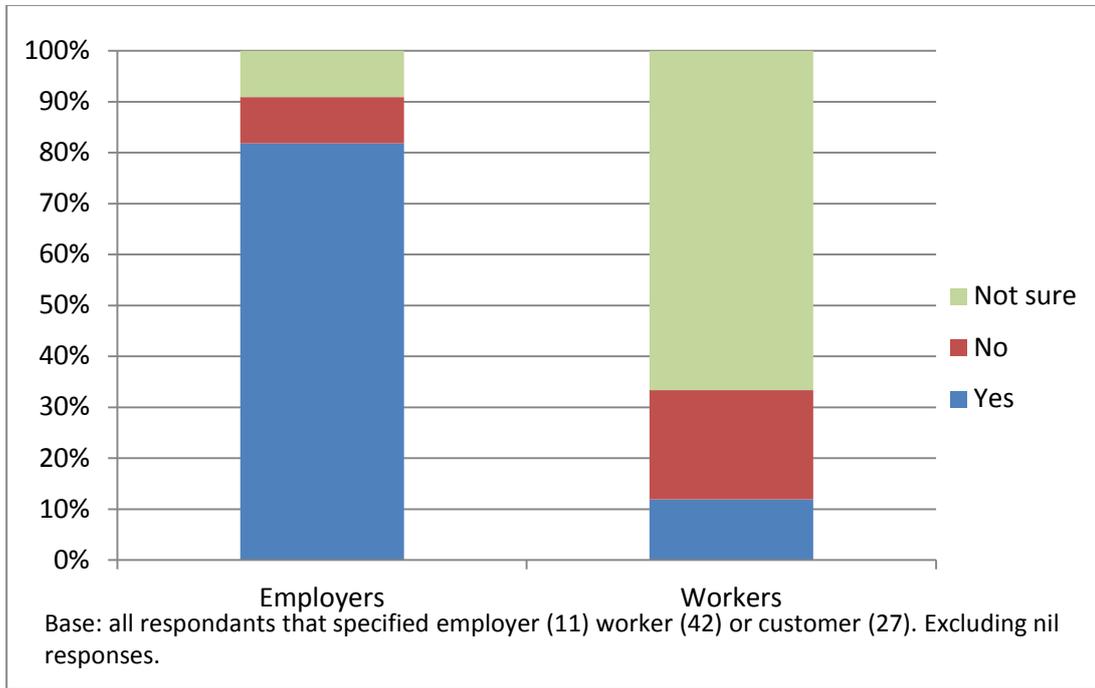


Figure 9: Question K) As a customer, do you leave a tip as a direct response to the service you receive?

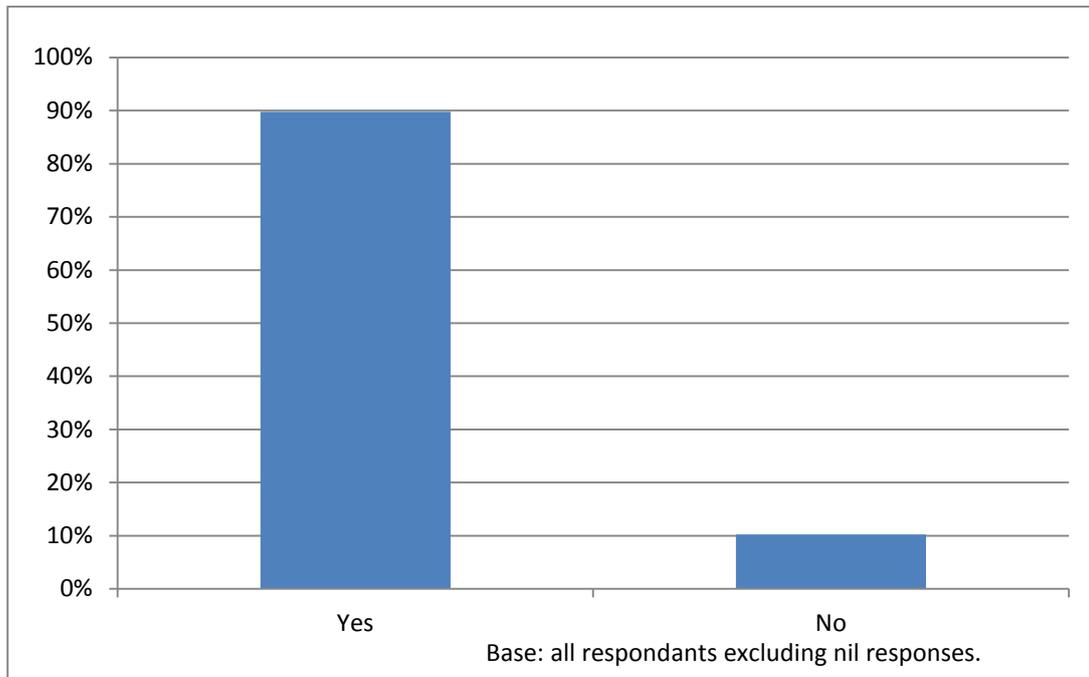


Figure 10: Question M) As a customer, are you, in general, aware of what happens to your tip?

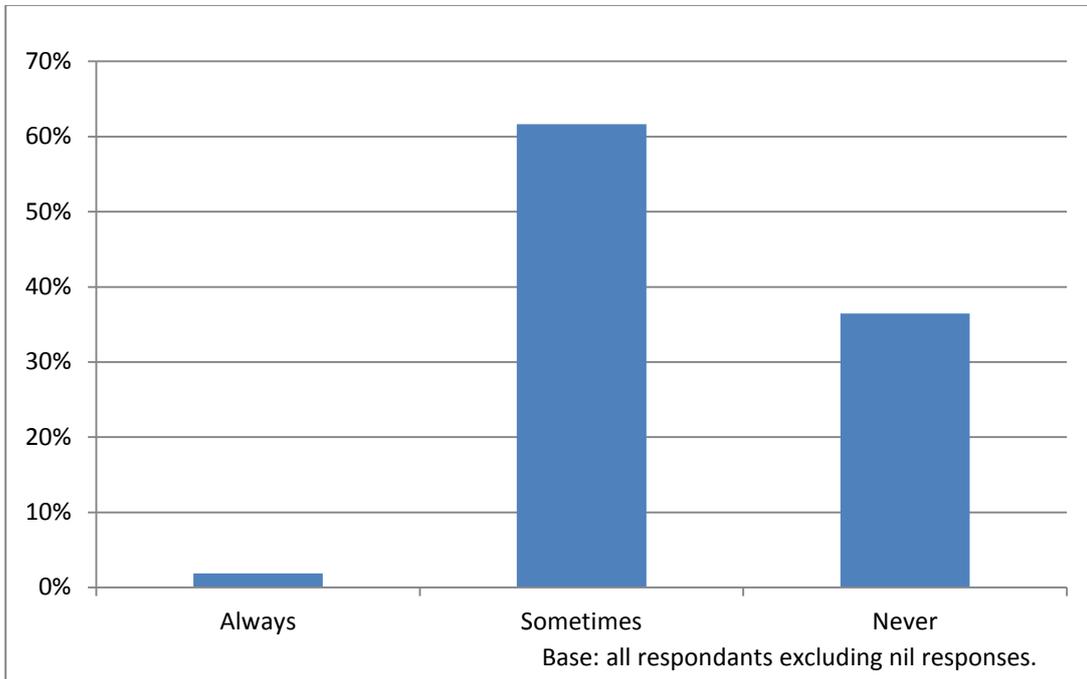


Figure 11: Question O) Do you / does your employer operate any of the arrangements set out above?

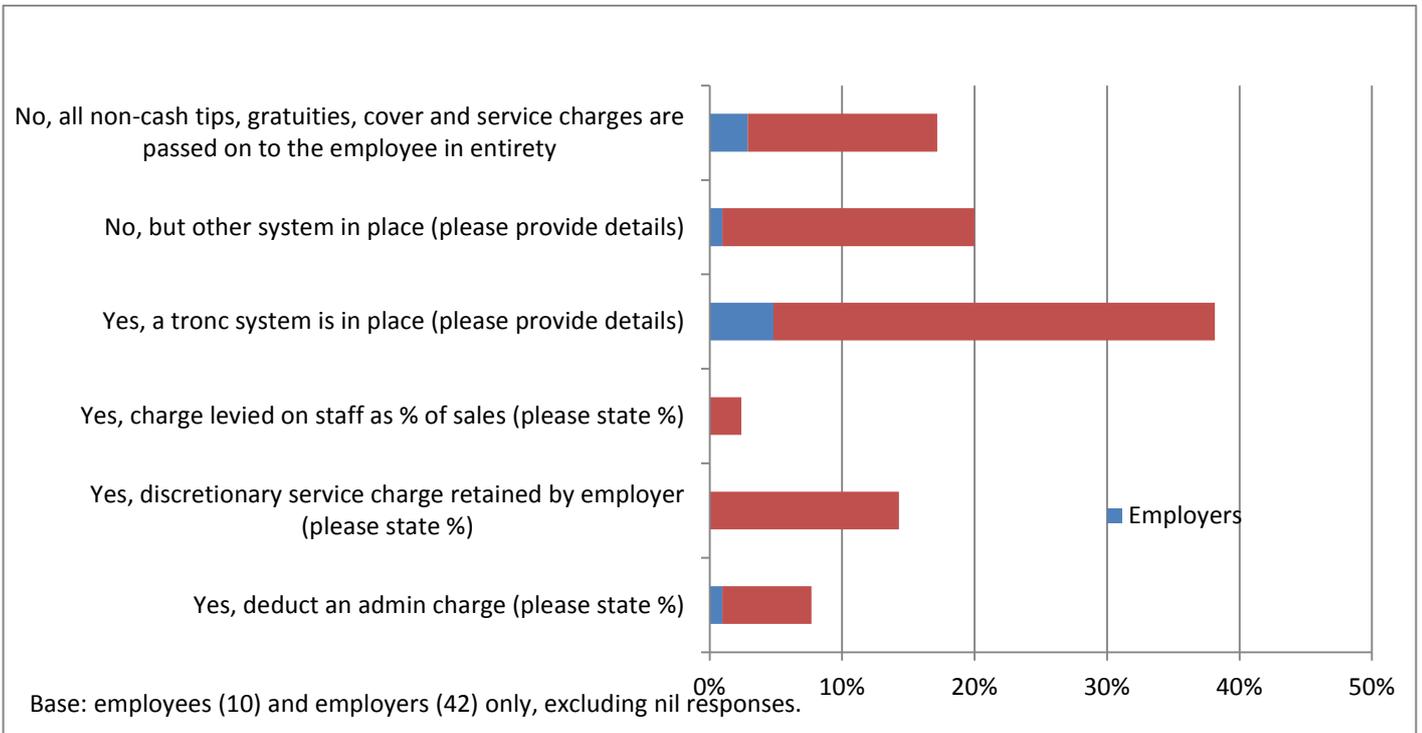


Figure 12: Question Q) As an employer, how do you treat tips and gratuities that are paid in cash?

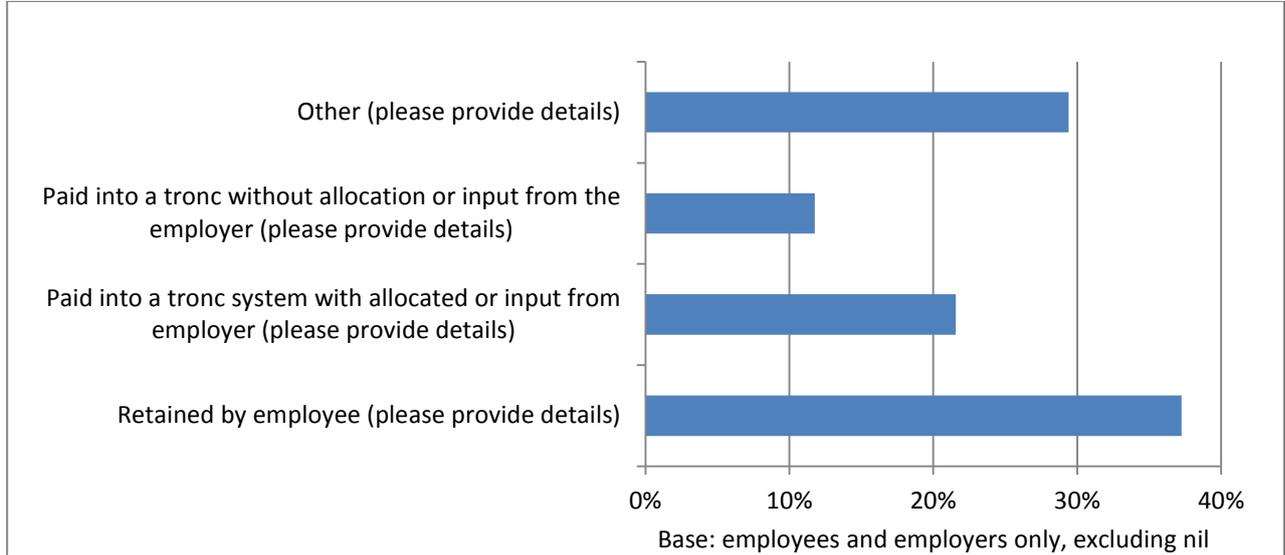


Figure 13: Question S) As a customer, do you prefer to leave a tip in cash or on card?

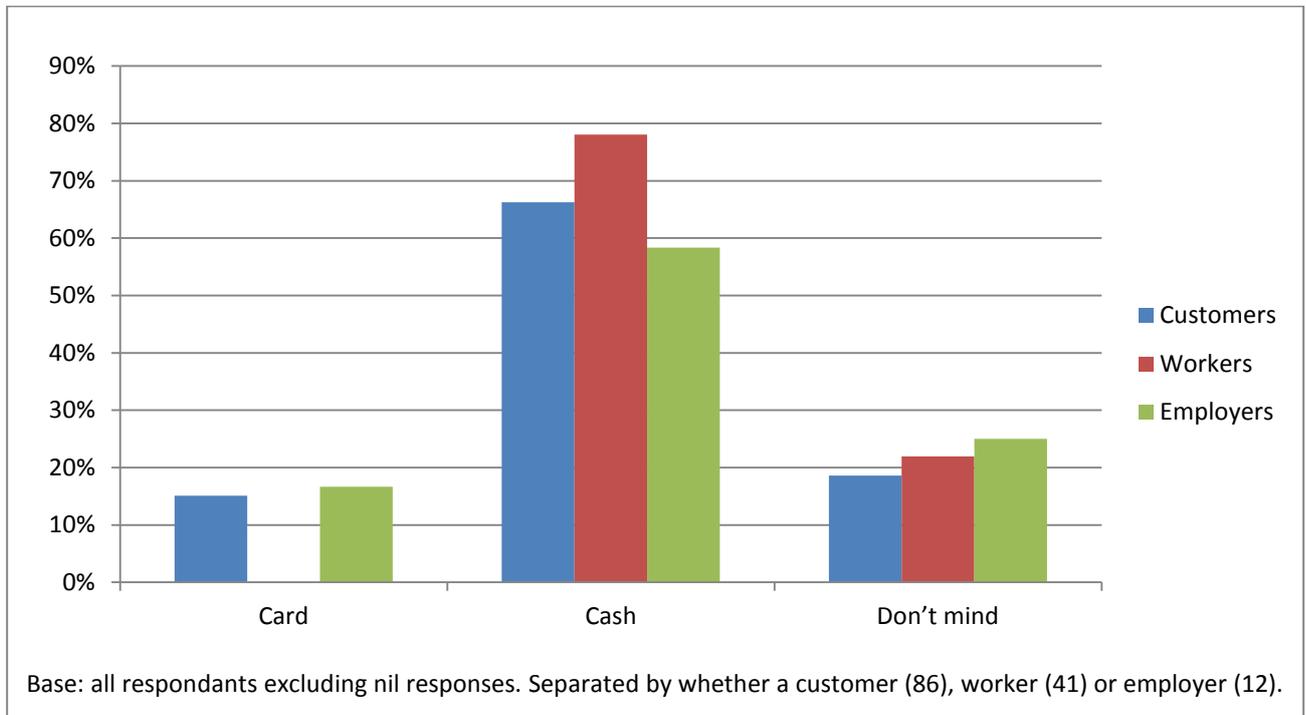


Figure 14: Question T) If cash / card, why do you prefer this method?

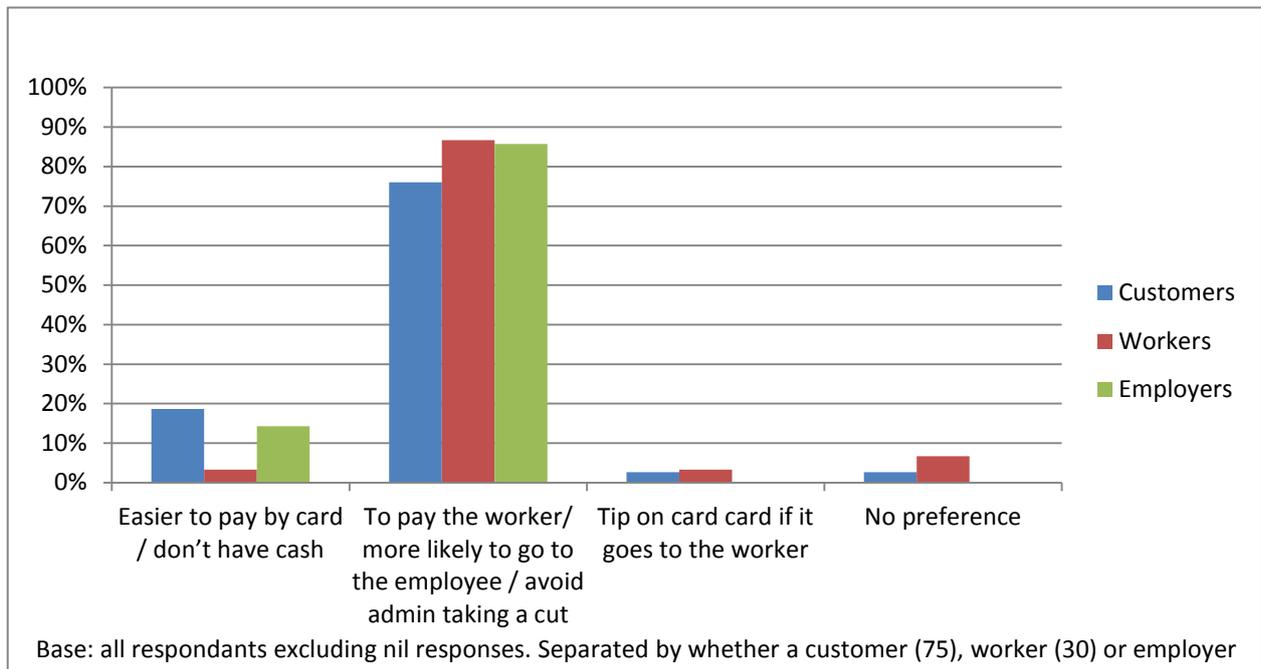


Figure 15: Question U) As a customer, what would you like to happen to your tips?

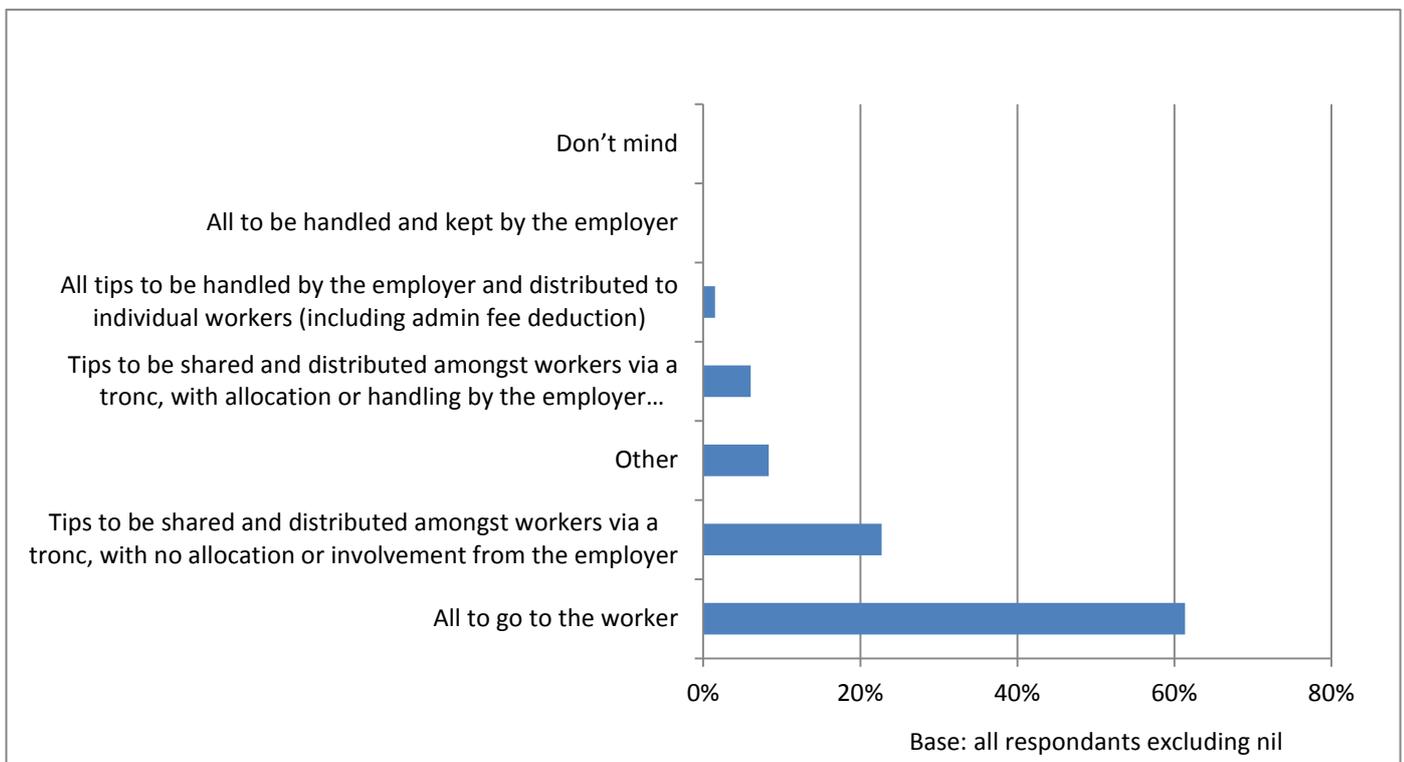


Figure 16: Question W) Can you suggest any options which would be appropriate to tackle any issues identified in this Call for Evidence?

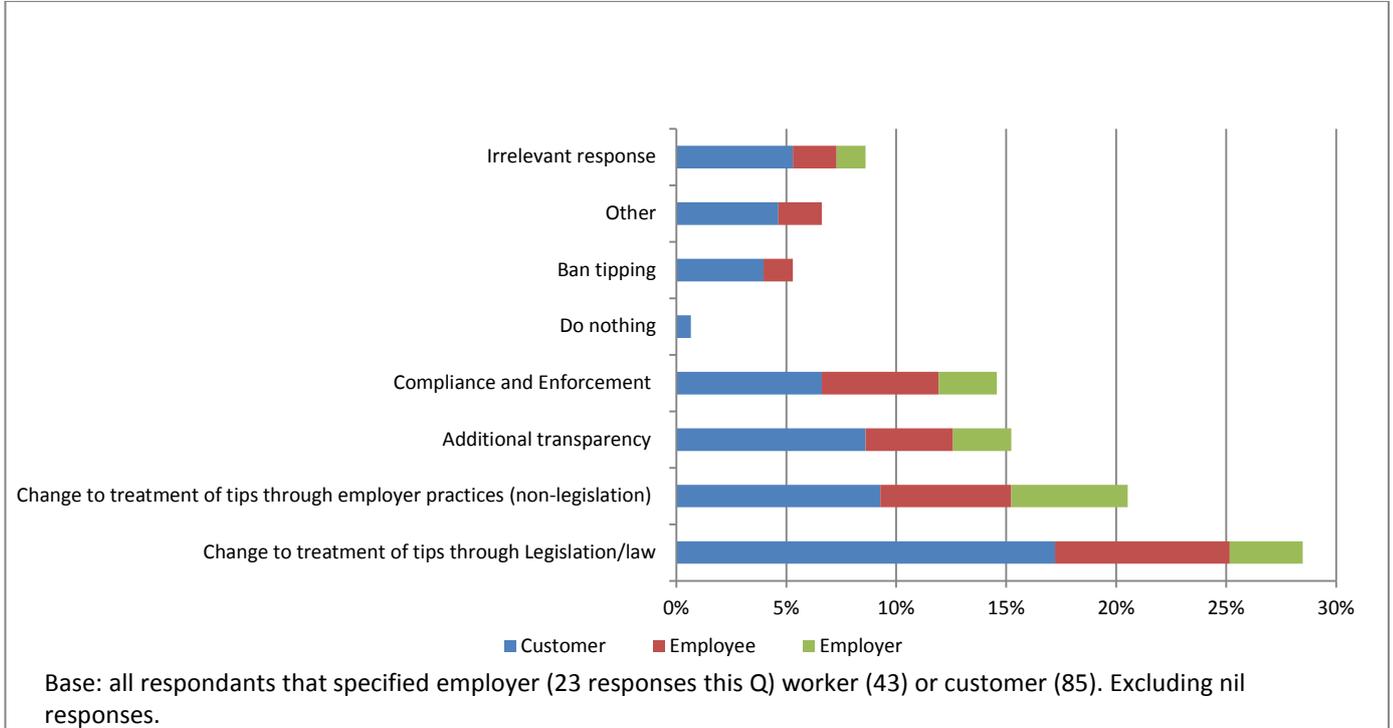
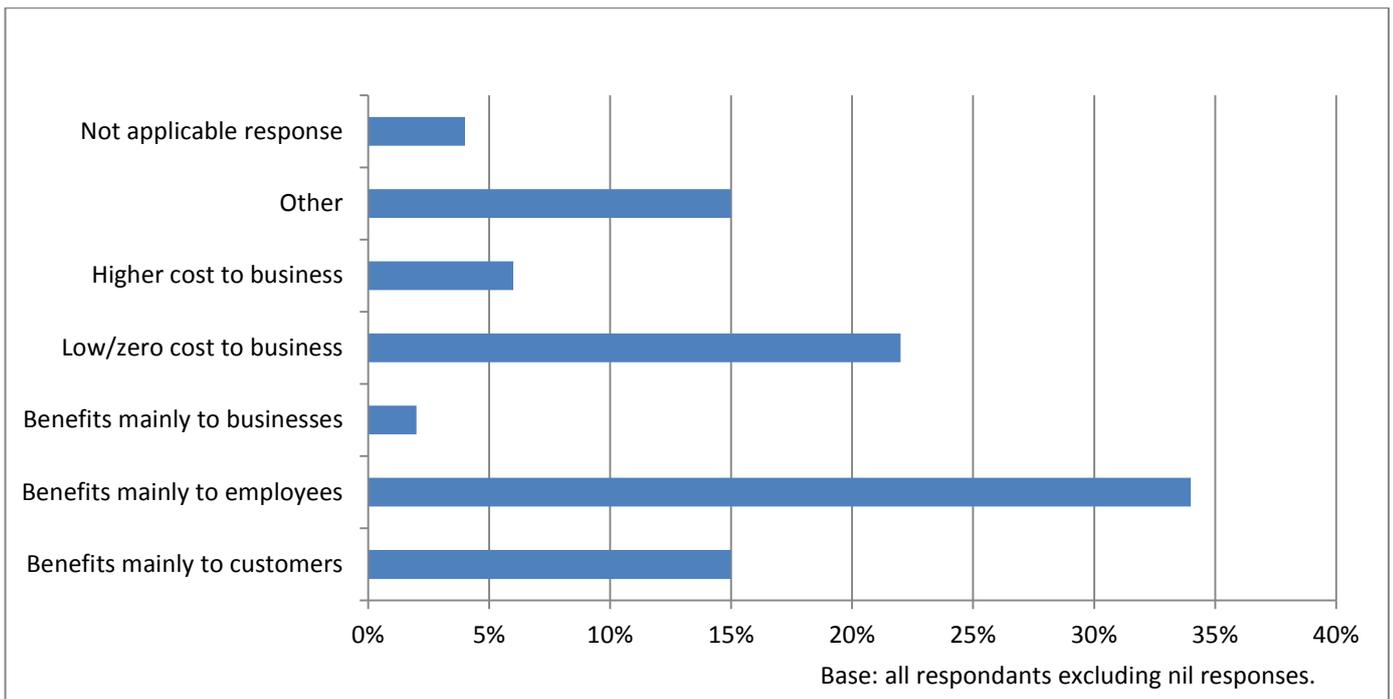


Figure 17: Question X) What are the costs and benefits of these options?





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