

LOW PAY COMMISSION



SINN FÉIN SUBMISSION THE REGULATION OF TIPS AND GRATUITIES

Low Pay Commission Submission

Executive summary

Sinn Féin is of the view, based on its research, that workers regularly have their tips withheld or deducted by their employer, and that the current way in which service tips and service charges are practiced and regulated in Ireland is inadequate with regard to providing protection for workers.

Sinn Féin welcomes the decision by the Low Pay Commission to investigate this matter. We see this process as presenting an opportunity for the commission to make a positive recommendation which could make a significant impact on the wellbeing and living standards of workers in the services sector.

We believe that action must be taken and that primary legislation should be implemented in order to deal with this issue.

In this submission we will demonstrate:

- (1) That the hospitality sector can be characterised by low pay and precarious employment.
- (2) That workers are not experiencing the benefits of a hospitality sector which is now making significant profits.
- (3) That qualitative and quantitative research points to widespread breaches of workers' rights in the sector; and that the withholding/deducting of tips by employers is prevalent.
- (4) That primary legislation is required to give workers a legal right to their tips.
- (5) That a code of conduct/practice will not work in a sector where the industry rejects collective bargaining.

An Overview of the Hospitality Sector

In 2016, there were 8.8 million visits to Ireland by tourists, up 769k on 2015 (9.6% increase)¹. In the same year, the Tourism industry generated €8.25b in revenue, supported by over 220k workers².

In 2016, the average national room occupancy rate for an Irish hotel was 72% (up 70% from 2015) – the highest level since 2005³. In 2017, room rates in Dublin reached an all-time high average of €128 (up 15% on 2016 figures), eclipsing the heady heights of the boom, which saw room rates at €121 euros in 2006⁴. Profits are also booming, with the 21st annual hotel industry survey, carried out by the advisory firm Crow Howarth, finding that profits per hotel room were up by almost 30% on 2016 levels across the country to €16,913⁵.

The Restaurant Sector is experiencing similar levels of growth. This is a sector supported by 72k workers, making an annual contribution of over €2b to the Irish economy. Last year, 57% of businesses associated with Restaurant Association Ireland (RAI) saw an increase in visitors from outside Ireland, leading RAI to declare on their website that ‘consumer demand for dining out is on the rise...creating more jobs than ever before’⁶.

Such claims are supported by a new report published earlier this year entitled ‘Delivering to the Global Economy’, produced by Capital Economists, which highlights that there has been an additional €15m in revenue generated in Irish restaurants due to Deliveroo alone. This represents a significant proportion of an overall growth of 30% in the sector. The report also predicts that the value of the restaurant sector will increase to over €9b by 2020⁷.

It can therefore not be denied that both the Irish hotelier and restaurant sectors are performing well and experiencing growth.

However, what we have not witnessed is this same recovery translating into an increase in standards and pay for workers in the industry.

In fact, Sinn Féin is of the view that the hospitality sector can be characterised as an industry of low pay, casual work and exploitation⁸⁹¹⁰¹¹.

¹ <https://www.tourismireland.com/TourismIreland/media/Tourism-Ireland/Press%20Releases/Press%20Releases%202017/Facts-and-Figures-2016.pdf?ext=.pdf>

² <https://www.ihf.ie/content/hotel-report-shows-substantial-growth-tourism>

³ <https://www.ihf.ie/content/hotel-report-shows-substantial-growth-tourism>

⁴ <http://www.crowe.ie/wp-content/uploads/2017/09/Hotel-Survey-2017-Executive-Summary.pdf>

⁵ <https://www.irishtimes.com/business/transport-and-tourism/hotel-profits-up-by-30-due-to-rise-in-rates-and-tourists-1.2773475>

⁶ <http://www.rai.ie/key-issues/>

⁷ <https://www.irishtimes.com/business/agribusiness-and-food/deliveroo-says-it-has-boosted-irish-takeaway-revenue-by-15m-1.3314329>

⁸ <https://www.tasc.ie/download/pdf/enforcedflexibilityfinal.pdf>

⁹ <https://dbe.gov.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>

¹⁰ https://www.ictu.ie/download/pdf/congress_submission_to_the_low_pay_commission_on_women.pdf

In 2017, 58% of workers in the hospitality sector earned less than €400 per week¹². More specifically, a worker in the hospitality sector earned an average weekly wage of €342, which is less than half of the national weekly average earnings of €697¹³. The proportion of those earning less than €10 an hour was 30% in Q4 2015¹⁴. That is poverty pay.

The sector also has the highest proportion of workers on the national minimum wage (22.3%)¹⁵. We know that the rate of material deprivation for those on the minimum wage is a staggering 31.8%, which is over 10% higher than the general rate of employee deprivation¹⁶. These are workers in an industry which had revenue of €8.25b in 2016, yet they are living a life of material deprivation and poverty.

The hospitality sector can also be characterised by precarious, casual employment practices. Zero hours and 'if-and-when' contracts provide workers with little or no predictability of hours, no certainty around their day-to-day lives, limited access to credit from banks and restricted ability to manage their personal/family life.

We know from the University of Limerick report 2015¹⁷ that precarious employment, low hours and split shifts are highly prevalent in the hospitality sector. In fact, out of all the areas which the study covered, 'if-and-when' contracts were most prevalent in the Accommodation and Food sector. The UL report suggests that the reasoning behind such a high prevalence of workers on such low pay and low hour contracts is down to an increase in the level of non-standard hours and the requirement by employers for workers to be flexible around working hours.

Why, therefore, is there such a disparity in the prevailing profits of the hoteliers and the stagnating wages and conditions of the workers?

An absence of Collective Bargaining

In the not too distant past, it was possible for workers to have a life-long career in the hotel and hospitality sector. Thanks to the hard work of trade unions and good employers, and regulation through Joint Labour Committee Agreements, workers could expect regular pay rises, salary scales, sick pay and even additional benefits for service with regard to holidays and pension arrangements.

¹¹ http://www.workplacerelations.ie/en/Publications_Forms/Workplace_Relations_Commission_-_Annual_Report_2017.pdf

¹² <https://www.tasc.ie/download/pdf/enforcedflexibilityfinal.pdf>

¹³ <https://www.tasc.ie/download/pdf/enforcedflexibilityfinal.pdf>

¹⁴ https://www.tasc.ie/download/pdf/tasc_low_pay_commission_final.pdf

¹⁵ https://www.tasc.ie/download/pdf/tasc_low_pay_commission_final.pdf

¹⁶ https://www.nerinstitute.net/download/pdf/a_profile_of_those_on_the_minimum_wage_neri_wp27.pdf

¹⁷ <https://dbei.gov.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>

Over the last twenty years all of this has been swept away, leading to a new model of employment for the sector based on precarious work, low pay and a blanket refusal by the industry to engage with trade union and the industrial machinery of the state.

Two significant consequences of this have been a significant rise in employee turnover across the sector and a skills shortage in areas such as chefs - as skilled employees vote with their feet and leave the sector or country for the pay which they deserve.

Prior to 2011, the hospitality sector was regulated by the Joint Labour Committees (JLC's). These Committees provided a platform for sectoral collective bargaining between employer and employee representatives. The JLC's formulated Employment Regulation Orders in order to set minimum pay and conditions for those working in catering and hotels. This was a vital process in order for workers to have their voices heard, and for the industry to hear the concerns and needs of workers.

Despite the fact that JLC's are used efficiently in other sectors such as Security, Retail, Contract Cleaning, and Agriculture; The Quick Service Food Alliance, supported by the Irish Restaurant Association and the Irish Hotel Federation, chose to fight to abolish the sectors JLC and to ensure that this process of communication was removed. Sadly, to the damage of the workers in the sector, these lobby groups were successful in removing and vetoing the JLC process.

The resistance by the industry to collective bargaining, coupled with an absence of primary legislative protection has left workers exposed to low pay and exploitation.

Workers' need legislative protection

The abuse of workers' rights in the hospitality sector is widespread.

One such piece of research to illustrate such a statement was a survey carried out by Sinn Féin in the Galway hospitality sector in 2017 (attach). The survey was designed to provide qualitative and quantitative evidence with regards to the experiences of waiting staff, bar staff and chefs in the Galway hospitality sector. The survey was closed at 415 responses.

We found the responses to be shocking.

45% of workers were not given a written statement of the terms of their employment within the first 2 months.

18% did not receive a regularly pay slip.

60% did not receive their statutory 15 min break after four and a half hours worked. 50% did not get a 30 minutes break after six hours worked.

50% did not receive their entitlement to 9 public holidays per year.

50% did not receive 11 consecutive hours of rest between shifts.

Over 40% did not receive 4 weeks paid annual leave.

78% of workers experienced verbal abuse sometimes/regularly, 36% experienced sexual harassment/abuse sometimes/regularly.

These are appalling findings which portray the hospitality sector as endemic with poor employment practices, and exploitation - from the most basic of contract conditions being breached, to very serious reporting's of sexual harassment.

Perhaps most relevant to our Low Pay Commission submission was the surveys finding that: 34% of workers reported the with-holding of tips regularly/very often/constantly.

This must be called out for what it is - employers are stealing tips for their own financial gain. These tips are being withheld for a number of reasons; some customers leave without paying, the till may be short a few euros that evening, perhaps it was a slow evening for the business, or the management are even keeping the tips to go towards a Christmas party. Regardless of what reason management may have for withholding tips, such a practice should never be permitted without the consent of the worker.

In the wake of these findings, Sinn Féin Senator Paul Gavan posted a call on Facebook for testimonies from workers with regards to the practice of tipping in the hospitality sector. The responses which the post received were very much in keeping with the horror stories which the Galway survey solicited.

Two examples of the testimonies which were received:

- (1) 24 year old male: I began working in a well-known, up-market restaurant chain. I was told that I wouldn't receive any of the tips which I earned during my trial period, which was supposed to last just one week. On my second day I was told by other staff members that the company would ensure my trial lasted until I made an issue of it. So I did, after 1 week. Thereafter, on finishing my trial period, I was told that I would only take home 50% of the tips I earned each night.
- (2) 26 years old male: While working in a café in Maynooth I had my wages taken without consent. From the start, management said that they would be withholding my tips for work nights out and a Christmas party. I was outraged. I was only getting €9.15 an hour and my tips were vital in order to pay my rent and buy food.

This is the reality across the sector.

In 2017, the Workplace Relations Commission (WRC), made 645 inspections in the Food and Drink sector¹⁸. There was a 58% non-compliance rate from employers with regards to workers' rights. This amounted to €444.6k in unpaid wages. The WRC also found 51% of Hotels to be non-compliant, amounting to over 101k euros in unpaid wages. Last year was no anomaly either. In 2016, the WRC found a non-compliance rate of 48% in the food and drink sector, amounting to €332.9k of unpaid wages, and a non-compliance of 38% in the Hotel sector¹⁹. Across the two sectors there were breaches of the Employment Permits Act 2003 and 2006, the National Minimum Wage Act 2000, the Workplace Relations Act 2015, the Organisation Working Time Act 1997 and the Payment of Work Act 1991.

Fortunately, through the WRC process these wages were repaid to the workers. However, what about those tens of thousands of workers whose employer never received a work place inspection? And perhaps most relevant to this submission, for those workers who did have their day in the WRC, their tips were never returned to them as they did not and still do not have a legal entitlement to their own tips. This goes to the heart of the issue.

Workers in Ireland do not have a legal statutory entitlement to the tips which customers hand over to them. There is no national agreement or official sectoral agreement on how tips are shared. Restaurant tips and service charges are not regulated sufficiently in Ireland.

We strongly believe that there is a consensus amongst the public and in our society that the tips which are voluntarily contributed by a customer should go to the staff, not the management – and this is not happening 34% of the time.

This is particularly frustrating when we consider that workers in the hospitality sector are living in poverty and deprivation, all while profits in the sector are at an all-time high.

The unfortunate reality of the hospitality industry is that due to the poverty pay within the sector, many workers depend upon the tips they earn at work. It would be Sinn Féin's preference that workers were paid a living wage and did not have to rely on tips to supplement their low pay, but their situation is a by-product of a sector in which low pay, precarious employment and poor work conditions are the norm.

Sinn Féin is therefore advocating that we look towards primary legislation as a solution to the ongoing issue of workers having their tips stolen by their employer.

A legislative solution

Sinn Féin is in favour of a legislative solution to resolve this issue as it is clear that the industry will not engage with trade unions or recognise the industrial machinery of the state. This is despite the fact that it is an industry that benefits from a state subsidy worth

¹⁸ http://www.workplacerelations.ie/en/Publications_Forms/Workplace_Relations_Commission_-_Annual_Report_2017.pdf

¹⁹ https://www.workplacerelations.ie/en/Publications_Forms/WRC_Annual_Report_2016.pdf

half a billion of tax payers money. Therefore, in the absence of any sort of collective bargaining process, we must provide workers with statutory rights which can be upheld in court.

What workers need are robust statutory rights which can give them protection from bad employment practices.

We know that legislation can work because it works elsewhere.

In 2015, Ontario introduced an Act entitled 'Protecting Employee's Tips Act 2015', an Act to provide a general prohibition on withholding tips or gratuities from employees. This law came into effect on June 10, 2016²⁰.

The Act provides a definition of what is, and what is not a "tip or other gratuity". It also states that an employer shall not withhold tips or other gratuities from an employee. Any amount so withheld has to be paid back as a debt to the employee.

Chapter E-6.2 Employment Standards Act, section 17 regulates tips and gratuities. In particular it highlights that tips are the property of the employee (while allowing pooling) and that the employer should not treat tips as wages, withhold any amount, or pass on any administrative charges.

The Canadian legislation also produced accompanying best practice guides for both employers and employees. Such as Employees such track how much they contribute to the pooling system and how much they receive from the pool. Employers should establish a clear policy for the handling of tips and post their pooling policy clearly for employees to see.

The Canadian government also provided a very simple online process through which workers could make a claim to the Minister of Labour with regards to tipping issues. This was further supported by a toll-free number which workers could call for information.

What is particularly impressive with regards to the action of the Canadian Government is that it introduced legislation, coupled with a code of practice and an online/phone helpline all at the same time. Rather than taking a piecemeal approach to the issue, they tackled it head-on, introducing a robust piece of legislation propped up by relevant supports. Canada has provided a potential model to move forward with.

We are also aware of that fact that in 2016 the British government completed their consultation process regarding the practice of tips and gratuities²¹.

The executive summary of that consultation document states the following:

²⁰ <https://www.ontario.ca/laws/statute/S15032>

²¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/521946/bis-16-172-tipping-consultation.pdf

'11. Analysis of Call for Evidence submissions indicated 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 workers or be shared amongst workers without involvement from an employer.'

It is some statement that even one the most conservative British government ever is ahead of the Irish state in looking at prospective protections for workers' rights.

One such submission which they received was from Unite the Union in Britain²², who garnered 600 responses from customers and workers for a survey on tipping.

One question which the survey asked was: *How do you think government can best ensure that workers receive fair tips?* 89% of those surveyed called for primary legislation to give staff 100% of ownership rights over their hard earned tips.

There was also a strong message received that tronc schemes should be genuinely independent, free from employer interference, run by staff for staff. As well as greater transparency so that staff and consumers alike know how the money is distributed and how much the company pockets for itself.

It is clear from both the approach of Canada and Britain that the industry, the workers and the customers want a legislative proposal that provides certainty and transparency.

Sinn Féin's proposal

On the 22nd of March 2017, Sinn Féin Senators Paul Gavan, Fintan Warfield and Trevor O Clochartaigh introduced a Bill entitled the 'National Minimum Wage (Protection of Employee Tips) Bill 2017²³.

The Bill is an Act to amend the National Minimum Wage Act 2000 to provide for additional protections for employees in the service sector to ensure they receive tips or gratuities paid by customers and to provide for related matters.

The purpose of the Bill is very simple, if enacted, it will give workers in the services sector a legal right to hold on to the tips they earn in the workplace. It is a bill which will make it illegal for an employer to withhold, deduct or demand the return of a tip from an employee unless the employer has a lawful reason, as outlined in section 3, 10F (1) of the Bill.

The Bill would also allow for workers to share/pool their tips together. Section 3, 10F (4) (b) of the Bill mandates the Minister to introduce regulations to facilitate the introduction of Tronc Schemes to ensure an equitable distribution of tips in the workplace (section 3, 10F (4) (b) of the Bill)

²² www.unitetheunion.org/.../Government%20consultation%20on%20tips11-27308.doc

²³ <https://data.oireachtas.ie/ie/oireachtas/bill/2017/40/eng/initiated/b4017s.pdf>

The Bill would bring greater transparency to the practice of tipping. Section 3, 10F (4) (a) will require an employer to display on menus or in another suitable manner its policy regarding the distribution of tips to employees.

The Bill caters for smaller restaurants and service providers in section 3, 10F (4) (d) where it states that an employer may take a share of the tips or other gratuities if that employer regularly performs to a substantial degree the same work as some or all of the employees.

The Bill will not change the practice or theory of tips and taxation. The current position of Revenue is that where tips are routed through the employer, then PAYE, USC and PRSI must be applied to the amount paid, including employer PRSI. If tips are received directly from patrons, there is no obligation on the employer to operate PAYE, USC and PRSI on the amounts received. Employees are obliged to declare tips received in their annual return of income – this has always been the case. In the case of credit card tips, the employer must operate PAYE, USC and PRSI. In other words, all these issues will stay exactly the same.

The Bill has the public support of both Mandate the Trade Union and SIPTU. The Bill was also supported by Fine Gael, Fianna Fail, Labour, the Greens and a host of Independents in the Seanad when it was debated at Second Stage on the 24th of January.

The Bill passed Second Stage with unanimous support. Here is a sample of the support which the Bill received²⁴:

Fine Gael Senator Ray Butler “When I tip a person after a meal in a restaurant, I expect that person to keep their tip. It is not good enough that this money would go to the employer... I support Senator Gavan’s worthy Bill.”

Fianna Fáil Senator Aidan Davitt “We are in favour of increased transparency for workers and consumers in how tips and gratuities are treated and to make it clear to consumers that they are voluntary. However, this has to be clarified by legislation, as this Bill attempts.”

Independent Senator Alice Mary Higgins “I will support the Bill and urge everybody not just to recognise and praise it but to actively support it because that would send an important message to employers as we go into the summer tourism season.”

Labour Senator Ged Nash “I am pleased to support the bill by my good colleague, Senator Gavan. This work confirms that we already know anecdotally, which is that all too often, workers in hotels and restaurants and the food and accommodation sector effectively have their tips stolen from them.”

Sinn Féin is of the view that there is a broad cross-party support for primary legislation to be the best route to resolve this particular type of exploitation. We believe that our proposed piece of legislation provides some solutions to the ongoing issue and that it should move to

²⁴ <https://www.oireachtas.ie/en/debates/debate/seanad/2018-01-24/13/>

Committee stage where we are willing to consider amendments proposed by other groups, as well as the Low Pay Commissions recommendations.

We recognise that our proposed Bill will not resolve all outstanding issues – but we do believe that our legislation could make a real difference to the earnings of many people working in the hospitality sector, and to other areas of the service economy.

Over the course of the last six months, Sinn Féin has been contacted countless times by workers in the sectors of Hairdressing, Beauty and by Taxi drivers with regards to our legislation, and we have been able to confirm to those workers that our legislation does indeed cover their sectors.

We believe that our proposals are moderate and fair. We are only advocating that workers have a legal right to the tips which they have worked hard for and earned. Tips have the potential to represent a substantial increase to the income of a low paid worker and workers deserve to have their rights protected by the law.

Good employers have nothing to fear from this process. Sinn Féin’s proposed legislation will not change anything for the good employers out there who already ensure that their workers receive the tips that they earn. In fact, legislation will help good employers who are currently penalised by the lack of regulation in this area. Good employers who pass on tips in a proper manner and treat their workers well are currently being undercut by bad employers who are dipping their hands into the tips jar. The latter are able to provide services and food at cheaper rates and are, therefore, undercutting their next door neighbours. The good employers out there need and want this legislation.

A code of practice

A code of practice/conduct will not work in the hospitality industry. In order for such a code to work there needs to be two willing partners. Both the employers and the employees need to be willing to recognise and fulfil the charter.

This is an industry in which the employer representatives have flat-out refused to engage in collective bargaining. They refuse to recognise the right of workers to be represented by their chosen trade union. They fought to remove the mediation process of Joint Labour Committees. They have refused to engage with the industrial machinery of the state. They refuse to accept and adhere to the findings and recommendations of the Workplace Relations Court.

This is an industry in which the most basic of workers’ rights are breached across the board, as highlighted in the WRC annual reports. And these are rights which are already explicitly protected by law. What would make one think that this same industry would suddenly respect and recognise a code of practice which has no teeth or substantial penalties attached?

It is absolutely clear from recent history that this is an industry that does not respect trade union, it does not respect the states industrial machinery and it will not adhere to any code of conduct/practice which is not enforceable by law. Such a code will have little or no effect.

Conclusion

It is evident that there is widespread abuse of worker's rights in the hospitality sector. We know this from the consecutive WRC annual reports which point to the most basic of workers' rights being breached right across the sector, right across the country. We also know from our own research that one in three workers' are not receiving the tips which they earn – this is unacceptable in a sector that is characterised by low pay and precarious employment.

Surely, it is in the interests of both employers and employees to increase standards within the sector? This is an industry characterized by a high staff turnover and skill shortages. It is in the interest of all stakeholders, including the State, to intervene and regulate this sector due to the importance of our tourism industry.

Considering this is a sector in which employer representatives flat out refuse to engage with either trade union's or the industrial machinery of the state – we believe that a code of practice would provide little or no progress with regards to this issue.

Sinn Féin is of the view that the adequate way to move forward is to provide legal protections for workers through statutory rights. This can be achieved by publishing legislation that gives workers a legal right to their tips – as has been done successfully in Ontario, Canada.

Sinn Féin has successfully moved such a piece of legislation to Committee stage in the Seanad, with cross-party support from Fine Gael, Fianna Fail and Labour. We are very much open to constructive recommendations with regards to how our legislation could be improved, and we hope that the Low Pay Commission agrees with our conviction that legislation is the way to go forward.



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