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Tips, not traps: What the National Consumer Tribunal's latest ruling means for service charges in hospitality

24 November 2026 *5 min read*

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The National Consumer Tribunal has found that Totafin Proprietary Limited, trading as TriBeCa Standard, breached the Consumer Protection Act 68 of 2008 ("**CPA**"). The restaurant added a 10% service charge to every bill automatically, even though its menu described the charge as discretionary. The National Consumer Commission ("**NCC**") has welcomed the decision and announced inspections of restaurants across the country. The ruling matters to every business in the food and hospitality sector.

What the Tribunal found

The Tribunal found two separate breaches. The first relates to pricing. The CPA prevents a supplier from charging a consumer more than the price it has displayed for goods or services (section 23(6)(a)). TriBeCa's menu did not explain what additional services the 10% paid for, and it did not show the full price the consumer would actually pay. The amount charged was therefore higher than the price displayed.

The second breach relates to unfair terms. The CPA prohibits suppliers from doing business on terms that are unfair, unreasonable or unjust (section 48(1)). It also prohibits terms that undermine the purposes of the Act (section 51(1)(a)(i)), and terms that directly or indirectly require consumers to give up rights the Act grants them (section 51(1)(b)(i)). The Tribunal held that expecting consumers to dispute the charge when service was poor effectively required them to give up their right to service of a proper standard. That practice was both unfair and prohibited.

This Tribunal's reasoning cannot be faulted. The rights the CPA gives consumers apply automatically; consumers do not have to claim them before they take effect. A system that requires a consumer to challenge the business, often at the table and in front of others, to avoid paying for poor service turns that principle on its head. A legal right becomes something the consumer has to negotiate for. Many consumers will simply pay rather than raise the issue. This undermines the purposes of the CPA and is therefore prohibited.

Automatic charges versus genuine tips

The Tribunal made it clear that tipping remains lawful. A tip is permissible as long as the consumer freely decides to give it and it is not added to the bill automatically.

The distinction is important. A tip is a gift that the consumer chooses to make once the service has been provided. An amount that appears on the bill by default, and which the consumer must ask to have removed, is not a gift. It is part of the price the business is demanding. Once it is treated as part of the price, the CPA's rules on pricing and fairness apply to it in full. Calling the charge "discretionary" makes no difference where, in reality, it is the business and not the consumer that decides whether it is paid.

Mentioning a charge on the menu is not enough

Many businesses may have believed that a note on the menu referring to a service charge was enough to protect them. The Tribunal's finding suggests otherwise. A general reference to a percentage charge, without explaining what it covers *and* without showing the full price payable, does not count as a displayed price under the rule against charging more than the displayed price.

The consequences are significant. The price shown must be the price the consumer actually pays. If a compulsory or automatically added amount sits outside the menu prices, every bill that includes it may amount to charging more than the displayed price. In the present matter, Tribeca was processing approximately 200 service charges daily, demonstrating systematic non-compliance rather than a once-off occurrence.

Practical implications for the food and hospitality sector

With the NCC announcing that restaurant inspections are under way, businesses should review their practices now rather than wait for a compliance notice. The central principle is straightforward: the price a consumer sees before ordering must be the price the consumer pays, and any tip must be a matter of genuine choice.

Businesses should start by checking that their menus and other price displays reflect the full amount payable, including any compulsory charge. The way a charge is described should match how it is actually applied: a charge should only be called optional if the consumer has to choose to pay it. Where a business wishes to invite a tip, the decision should rest entirely with the consumer, both on the bill and on card machines and other payment systems, which should not add an amount by default.

Where a business has a sound commercial reason to keep a fixed charge, for example for large groups, it should explain clearly and in advance what the charge covers and present it as part of the total price rather than as an optional extra.

Finally, businesses should ensure that staff understand and follow these practices, and should keep records of menu changes, staff guidance and system settings so that they can show compliance if inspected.

Conclusion

The TriBeCa decision sets a clear rule: a tip must be the consumer's choice, and the price displayed must be the price paid. Businesses that add service charges to bills by default, leaving it to consumers to object, risk findings under both the CPA's pricing rules and its rules on unfair terms.



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