

Funerals Market Study

Westerleigh Group's response to the CMA's Interim Report

1. Introduction

1. The Westerleigh Group ("**Westerleigh**") welcomes the opportunity to respond to the CMA's interim report regarding its funerals market study (the "**Interim Report**"). Given that Westerleigh is primarily active in the operation of crematoria, our comments in this response are focused on the CMA's provisional findings and proposal to make a market investigation reference ("**MIR**") regarding the supply of crematoria services, and we do not comment specifically on the CMA's proposal to make a MIR in relation to funeral director services.
2. Westerleigh is highly concerned that the CMA's analysis of the crematoria sector does not accurately reflect the competitive dynamics of the market and, as such, does not believe that the evidence presented in the Interim Report represents a sufficient basis to make a MIR. Over two thirds (70%) of cremations in the UK are supplied by local authorities. It is therefore surprising that much of the CMA's evidence gathering and analysis in the Interim Report focuses on private operators, while the CMA appears to have only conducted high level conversations with a small number of local authorities. As a result, the Interim Report does not sufficiently distinguish between private and local authority operated crematoria and fails to recognise the important role of the private sector in driving investment in delivering new and higher quality crematoria to the benefit of consumers.
3. The CMA has, furthermore, conducted a simplified analysis of crematoria charges for the purposes of the Interim Report, which focuses on the level of annual price increases in recent years without taking sufficient account of other relevant factors, whilst relying unduly on a limited consumer survey to assess consumer behaviour. As a result, the CMA has failed to appreciate the variation in quality of crematoria facilities and services, as well as the importance of quality to consumers and competition between crematoria. The number of cremations carried out by private operators has increased by over 45% since 2007, demonstrating that consumers are shifting to higher quality facilities where available.
4. We are firmly of the view that the CMA's proposal to make a MIR in relation to crematoria services is not appropriate and would be more likely to have adverse effects than to result in remedies which would benefit consumers. This is particularly the case given that most crematoria are operated by local authorities, and most of the potential remedial options which would be available to the CMA at the end of a market investigation will therefore already be available at the end of the current market study, in the form of recommendations to government and/or local authorities.
5. We believe this would represent a more proportionate approach than subjecting a sector which is constituted by relatively small operators and (in the main) local authorities to the significant burden of a full market investigation at a time when further investment is essential

to ensure that sufficient capacity is available to meet the expected increase in demand for cremations in coming years.

6. The Interim Report outlines a limited number of potential remedies beyond recommendations. However, we believe the CMA should be able to recognise, even at this stage, that these would not be appropriate. In particular, the CMA contemplates imposing pricing regulation on private operators only, which would raise the potential for a significant distortion of competition as well as complicated questions of law, including compliance with rules on State aid and the freedoms to provide services and of establishment. Similarly, the CMA's own analysis demonstrates that there is no basis on which divestments of crematoria could be required.
7. The remainder of this response is structured as follows:
 - (a) **Section 2** sets out brief background information on Westerleigh and its investment in new, high quality, crematoria facilities in the UK;
 - (b) **Section 3** explains Westerleigh's reasons for considering that the CMA's analysis as set out in the Interim Report is insufficient to justify a MIR in relation to the crematoria sector, and that a MIR would in any event not be appropriate or proportionate given the potential remedial options available to the CMA;
 - (c) **Section 4** provides Westerleigh's initial views on the potential recommendations to government in relation to the supply of crematoria services outlined in section 8 of the Interim Report.
 - (d) **Section 5** contains Westerleigh's concluding remarks on the CMA's proposal to make a MIR in relation to the supply of crematoria services.
2. **Westerleigh has invested significantly in developing new and high-quality crematoria facilities to the benefit of consumers**
8. As set out in the Interim Report, Westerleigh is the second largest operator of private crematoria in the UK, currently operating 32 crematoria with a further 2 under development. Westerleigh has been leading the supply of new crematoria in the last decade, increasing competition and choice for consumers, having built 18 new crematoria in the last 10 years and investing capital expenditure in excess of £123m.
9. Many of Westerleigh's crematoria are in areas that previously offered no provision within a reasonable drive time for the local community. This investment means that Westerleigh is contributing to increasing crematorium capacity in the UK to address the growing demand from families for a quality service that can be tailored to suit their individual needs. As well as increasing choice, the increase in capacity has led to an increase in the average time per service. This has, in turn, resulted in an increase in the numbers of people opting for cremation, which remains a significantly cheaper option than burial.

10. As well as developing new crematoria, Westerleigh is continually investing in its sites, maintaining and improving the quality of the facilities, setting and service, as well as expanding existing sites to meet increasing demand. The development of new, purpose-built facilities provides consumers with an alternative choice to the majority of crematoria in the UK which are older, lack capacity and can offer a lower quality service to the bereaved. Westerleigh's sites offer high quality care and service in attractive and peaceful settings, which ensure that the needs of the bereaved are met.¹
11. This investment has had a significant impact in improving consumer choice in the crematoria sector. We are concerned that the CMA has fundamentally overlooked this market context in its Interim Report and proposal to make a MIR. Westerleigh's investment has focused on growth of its portfolio of crematoria and improvement of its existing facilities, rather than acquisitions of existing sites. This has required a return on capital and, in part, explains the recent increases in Westerleigh's prices. We believe that these price increases are proportionate with the improvement in quality and capacity delivered, which has benefited consumers overall.
12. As explained below, Westerleigh believes that a proper balancing of the potential benefits of a market investigation against the significant burden to business and local government and the risks of stifling further private sector investment by Westerleigh and others should lead the CMA to the conclusion that it is not appropriate to include crematoria services within the scope of any MIR.
3. **A market investigation reference is not justified in relation to crematoria services**
13. As set out in the CMA's guidance on market investigation references, before making a reference the CMA must consider whether it would be the most appropriate way of proceeding. The CMA has stated that it will only make a reference where each of the following criteria are met:
 - (a) it would not be more appropriate to deal with the competition issues identified by applying the Competition Act 1998 or using other powers available to the CMA or, where appropriate, to sectoral regulators;
 - (b) it would not be more appropriate to address the problem identified by means of undertakings in lieu of a reference;
 - (c) the scale of the suspected problem, in terms of its adverse effect on competition, is such that a reference would be an appropriate response to it; and

¹ Westerleigh receives consistently positive feedback received from customers regarding the quality of its facilities and services, with its sites receiving an average feedback score of 94% in 2017.

- (d) there is a reasonable chance that appropriate remedies will be available.²
14. As the CMA's guidance explains, this assessment must be made taking into account the proportionality of making a reference, having regard to the scale of the problem identified, the burden on business, and the public expenditure costs of a market investigation by the CMA, and the potential benefits that may be obtained from any remedies imposed at the end of such an investigation.³
15. Based on its analysis to date, the CMA has identified four features which it believes may prevent, restrict, or distort competition in the supply of crematoria services:⁴
- (a) customers' vulnerability and difficulty in engaging at the point in need;
 - (b) customers' unresponsiveness to measures of price or quality;
 - (c) low numbers of crematoria providers in local areas; and
 - (d) high barriers to entry arising from the planning regime and high fixed costs.
16. As set out in section 3.1 below, Westerleigh believes that the CMA's analysis of competition between crematoria in the Interim Report is insufficient to justify including crematoria services within the scope of any MIR and the CMA is likely to have overestimated the scale of the problems it has identified. In particular, the CMA has conducted only a simplified analysis of crematoria charges, failed to appreciate the importance of quality to competition between crematoria, and relied unduly on a limited and unrepresentative consumer survey as the basis for its analysis of consumer behaviour.
17. In any event, Westerleigh considers that a market investigation is not an appropriate or proportionate response to the CMA's preliminary findings, given the other options available to the CMA to address these issues, the complexities and risks raised by certain of the potential remedies outlined by the CMA, and the burden which a lengthy market investigation would place on the sector (including local authorities). In particular:
- (a) A market investigation would create a significant burden on private crematoria operators, which represent only a very small part of the overall funerals market being reviewed by the CMA, at a time when private sector investment is required to address an increasing need for additional capacity to be delivered (see section 3.2).
 - (b) The CMA's powers to address the adverse features of the market it has identified are limited as the large majority of cremations are carried out at facilities operated by local authorities, in relation to which the CMA can only make recommendations to

² OFT 511, Market investigation references – guidance about the making of references under Part 4 of the Enterprise Act, paragraph 2.1.

³ OFT 511, paragraph 2.27.

⁴ Interim Report, paragraph 8.33.

government and/or local authorities. Westerleigh considers that it would be more proportionate for the CMA to make any recommendations it considers appropriate following a market study (see section 3.3).

- (c) The scope for CMA-imposed remedies in relation to private crematoria (i.e. beyond recommendations to government) is primarily limited to potential price regulation, which would raise complicated legal and policy issues including the potential for significant distortions of competition between privately owned and local authority operated crematoria (see section 3.4).
- (d) The CMA's concerns regarding consumers' ability to engage at the point of need is unlikely to be something which can be addressed through remedies in relation to crematoria. Given that consumers transact with funeral directors, any concerns in this area would be best addressed through transparency remedies in relation to the provision of funeral director services (see section 3.5).

3.1 The CMA's analysis of competition between crematoria is insufficient to justify a MIR

18. Westerleigh considers that there are several aspects of the CMA's substantive assessment of the supply of crematoria services which do not accurately reflect the competitive dynamics of the market. As a result, Westerleigh believes that the CMA is likely to have overestimated the scale of the problems it has identified. In particular, as explained below:

- (a) The CMA's analysis of crematoria charges does not take account of a sufficient range of factors.
- (b) The CMA has underestimated the importance of the quality of crematoria facilities and services to consumers.
- (c) The CMA's analysis of consumer behaviour relies heavily on a consumer survey which is not representative and therefore does not allow any meaningful conclusions to be drawn.

19. While the CMA may consider that further analysis of these issues is best undertaken in the context of a market investigation, Westerleigh strongly disagrees. In order for the CMA to properly assess whether a MIR is appropriate and proportionate it must have a sound basis for concluding that there are adverse features of the market which are harming consumers and be able to assess the scale of the problems identified. For the reasons set out below Westerleigh does not consider that the CMA has met this evidential threshold.

3.1.1 Pricing

20. Westerleigh believes that the CMA's consideration of charges, which focuses on the level of annual price increases in recent years, fails to sufficiently take account of the market context and that the Interim Report therefore presents an over-simplified picture.
21. As an initial point, the CMA has overstated underlying price inflation. While the CMA recognises that CPI is positive, this reduces incremental inflation by on average 2.4% per year during the period the CMA has analysed. The CMA's consideration of prices should also factor in CMA's finding that demand for crematoria has increased by 12% over the last ten years.⁵
22. Furthermore, while the CMA notes in its conclusions that the most expensive crematoria are all private ones, it has failed to recognise that this is typical of private operators in a range of traditionally public sector markets (including, for example, dentists, private healthcare and education) where the private operators will usually be more expensive than the traditional or publicly operated providers. This is because private operators need to differentiate themselves from the existing providers sufficiently, and typically such differentiation requires higher quality and a higher price.
23. This is the case in the crematoria sector. As noted above, the CMA has not taken sufficient account of the fact that private sector investment in new crematoria in recent years has delivered increased capacity and choice for consumers, as well as playing an important role in the shift towards cremation and away from burials (with cremation continuing to represent a significantly cheaper option for the bereaved in arranging a funeral service). As with any other industry, a private sector development will require a return on capital sufficient to stimulate investment in new facilities, which is taken into account in the fees charged together with other significant costs faced by larger private operators such as Westerleigh which are not borne by local authorities or single-site operators (e.g. those associated with head office planning and development activities).⁶
24. It is also important to note that if crematoria fees are adjusted for quality, to ensure a more like-for-like comparison than analysis set out in the Interim Report⁷, it is much less clear that private operators can be considered the most expensive. This can, for example, be seen by considering viewing fees on a per minute basis.
 - (a) In general, Westerleigh seeks to preserve 45-minute service times, compared to 30-minute service times found at many local authority operated crematoria. By providing longer service times, Westerleigh seeks to avoid a 'conveyor belt' experience that some mourners have complained of after participating in a shorter service.

⁵ Interim Report, paragraph 2.11.

⁶ [X].

⁷ Interim Report, Table 4 (page 97).

- (b) The average Westerleigh fee per minute is £16.76⁸, 12% lower than the average Local Authority fee per minute at £18.98⁹, even before other relative qualitative factors are taken into account.
25. The CMA also needs to be particularly careful that it does not take evidence relating solely or predominantly to a single operator and apply this evidence to all private sector operators. The CMA notes that Dignity operates 19 of the 20 most expensive crematoria, but it is evidently not appropriate to address any issues that are driven by a single operator by imposing the costs of a MIR on all operators in the industry.
26. Finally, the CMA must recognise that the considerations which are relevant to local authority crematoria charges are separate to those pertaining to private crematoria. In most cases, local authority facilities were built many years ago (in some cases several decades) and therefore local authorities do not have the same need to make a return on capital investments. As explained further in section 3.2 below, any issues related to the changing incentives or funding needs of local authorities¹⁰ driving price increases for local authority crematoria can only be solved through recommendations to government and/or local authorities. Such issues cannot, and should not, be addressed by restricting the commercial flexibility of private operators that are seeking to differentiate themselves with a higher quality offering for the bereaved.

3.1.2 Quality

27. Westerleigh strongly disagrees with the CMA's provisional assessment that quality-related factors do not play an important role in competition between crematoria and considers that the CMA has failed to properly appreciate the role which qualitative aspects of crematoria services play in driving customer choice between different crematoria.
28. As set out above, the quality of Westerleigh's services and facilities is at the heart of its crematoria offering. Westerleigh's experience, across the country, is that families are increasingly choosing Westerleigh's sites, which Westerleigh believes to be on the basis of the comparative quality. There has, moreover, been a clear shift in demand towards higher quality sites, as evidenced by the increasing volumes of cremations undertaken at Westerleigh's sites (as well as other private operators – see paragraph 3 above).
29. The importance of quality to customer choice is evident from the fact that Westerleigh's sites are drawing significant numbers of customers from the edges and outside their catchment area, i.e. customers are choosing to move away from their closest crematoria where a higher quality facility is available. This 'qualitative pull' is key to the profitability of many of

⁸ Based on 2018 prices.

⁹ As identified in Dignity plc's report "Cost, quality, seclusion and time", page 27.

¹⁰ The CMA notes that: "A number of reasons have been put forward for these trends, including cuts to local authorities' budgets leading to a rise in crematoria fees to increase income, and the impact of environmental legislation." See Statement of Scope, paragraph 50.

Westerleigh's sites. Accordingly, there is a real need to compete in these areas and to set prices accordingly. Indeed, the CMA acknowledges that there is limited evidence of a lack of quality in the services provided to consumers, which stands in stark contrast to the CMA's finding that there are limited incentives for crematoria operators to compete over quality (which would be expected to produce the opposite outcome).

30. Westerleigh believes a key reason for the CMA's failure to appreciate the importance of quality is driven by the fact that the CMA's assessment of customer behaviour is heavily reliant on a limited consumer survey, the results of which must be interpreted cautiously for a number of reasons (see section 3.1.3 below). However, even on the basis of this survey, the CMA is wrong to conclude that quality is not important:

- (a) The CMA considers buildings, facilities and timing flexibility or choice as the main parameters of quality competition, noting that few consumers value these: asked what the most important reason was for using the crematorium chosen, the CMA notes that only 1% indicated that the building was attractive and 2% referred to the available facilities.¹¹
- (b) However, the CMA fails to fully capture the extent to which the importance of quality is reflected in the survey results. Over a quarter of respondents (26%) indicated that the most important factor in choosing a crematorium was due to personal experience of using them or attending them previously while for a significant proportion (11%) the most important factor was a recommendation from someone the respondent had an ongoing relationship with, while reputation and reviews were also cited.
- (c) As shown below, together these account for around half of the most important cited factors in choosing. In each case, the reason reflects an understanding or perception of quality and reputation.

Table 1 - Proportion of consumers citing quality measures as most important factor or factors in choosing crematorium

Measure of <u>Quality</u>	Proportion citing as most important <u>factor</u>	Proportion citing most important <u>factors</u>
Personal experience of prior use	26%	38%
Timing flexibility or choice	5%	17%
Recommendation (from someone with ongoing relationship to consumer)	11%	12%
Reviews/ratings	1%	5%

¹¹ CMA customer survey table 64.

Reputation	2%	7%
Facilities and building environment	3%	7%
TOTAL	48%	-

Source: CMA consumer survey, Tables 64, 67 and 68

31. By focusing only on buildings and facilities the CMA's analysis fails to recognise the fact that personal experience reflects the quality of that prior experience and recommendations from funeral directors, family members or friends inherently include significant aspects of quality.¹² The CMA relies on several occasions on the fact that past experience of a crematorium may lead to consumers having a preference to use that site when arranging a funeral themselves, but fails to make the clear link to the quality of the facilities and service experienced previously. If quality was to deteriorate, the crematorium would suffer lost volumes (and thus lost revenues) because those personal experiences or recommendations that drive demand would be worse.
32. Similarly, the CMA notes that preferences of the deceased or bereaved may impose further subjective limitations on the crematoria choice¹³, without acknowledging that the deceased's preferences are as likely, if not more so, to include a perception of quality (alongside preferring it to be held in a particular location).
33. The importance of quality factors is also confirmed by the CMA's qualitative research, which mentions that consumers who had a choice of crematoria cited proximity or "*where they liked the grounds, premises and facilities*".¹⁴
34. Beyond the survey, the CMA has conducted only a very high-level assessment of a small number of qualitative metrics as part of its initial analysis, overlooking important elements such as the quality of the grounds, the peacefulness of the setting, the quality of the building, attentiveness of staff, waiting and WC facilities, comfort (e.g. heating and air conditioning), all of which are important to the bereaved. The difference in standard of these qualitative elements across different crematoria is evident from a side-by-side comparison of the aesthetics of a newly built facility, including those developed by Westerleigh, against older local authority sites and the provision and maintenance of these aesthetics requires investment, as does the provision of adequate high-quality staffing.¹⁵

¹² 62% of a limited 53 respondents already knew the crematorium they selected while 23% of respondents had received a recommendation from someone they have an ongoing relationship with (friend, family member, counsellor, religious leader). Again, this does not suggest quality is not an important parameter or that there is no competition between crematoria on quality (or price). Based on good previous experience people decide to use (or return to use) and recommend a specific crematorium. See survey table 62.

¹³ Qualitative research, paragraph 4.2.4.

¹⁴ Qualitative research, paragraph 4.2.7

¹⁵ The CMA's analysis of the impact of entry set out in Appendix C of the Interim Report is also focussed on prices and volumes but does not assess qualitative factors.

35. Westerleigh therefore believes that the analysis of qualitative factors in the Interim Report is an insufficient basis for the CMA to reach a conclusion that a MIR in relation to the supply of crematoria services is appropriate.

3.1.3 Limitations of the CMA's consumer survey

36. The CMA's analysis of consumer behaviour and decision-making in relation to crematoria services, set out in section 5 of the Interim Report, relies heavily on the consumer survey commissioned by the CMA. For example, in the section titled "*Demand relatively unresponsive to price and quality measures*", the consumer survey is the only piece of evidence relied upon by the CMA to support its provisional conclusions other than a single reference to an internal document. However, the consumer survey relied upon is extremely limited and in any event unrepresentative of the population of consumers involved in making funeral arrangements. The CMA cannot draw any meaningful conclusions on demand for cremation services from evidence of this nature, and it is therefore an inadequate basis upon which to make a MIR.
37. First, the sample size in relation to crematoria is very small and negligible (well below 0.1%) in comparison to the number of people who would have experienced making funeral arrangements involving a cremation in the 2-year period for which respondents were sought and cannot be considered sufficiently robust:
- (a) The Interim Report mentions that 6,109 adults of 18+ years were interviewed for the survey across the UK, but in total just 248 respondents indicated they were involved in cremation arrangements within the last 2 years.
 - (b) This compares to the 607,172 total number of deaths in 2017, of which the CMA indicates around 513,000 involved a funeral to be paid by the bereaved at the time of death and 466,072 involved a cremation (whether pre-paid or paid 'at need').
 - (c) Moreover, often multiple people are involved in the funeral or cremation decision making process (as also indicated in the CMA's qualitative research report), implying that the population the survey attempts to sample is considerably larger than the number of 'at need' funeral arrangements.
 - (d) The relevant sample is also smaller than the total number of crematoriums in the UK. The 248 respondents with experience of an 'at need' cremation with a funeral director involved is, on average, less than one respondent per crematoria (293 in total).
38. Second, the consumer survey evidence the CMA relies upon makes no distinction between local authority operated and private crematoria and it is unclear if those interviewed were referring to local authority or private crematoria in their responses. Given the limited number of individuals sampled, it is likely that many of them will have only experienced a local authority crematorium. It would be inappropriate to use the results and views of such consumers to draw conclusions for private crematoria.

39. Indeed, the approach taken by the CMA is inconsistent with its own best practice guidance on survey design ("**CMA Survey Guidance**").¹⁶ The choice of crematorium is, as the CMA highlights, a local one yet the CMA has undertaken a national survey. The CMA Survey Guidance notes that: "*Omnibus surveys... generate large samples only at a national level and are not designed to be representative of/to allow robust analysis at a defined local level. Therefore, the CMA is most likely to consider an omnibus survey in cases where we are interested in results at a national level.*"¹⁷ This is not the case here as there are specific and important distinctions in local areas that the CMA's survey has not taken into account, in particular whether the responses relate to consumers that use or are located near a local authority or private crematorium.
40. Third, the CMA has relied on consumers' views even where the consumer accepted that the choice of crematorium was driven by the funeral director and not themselves. Specifically, over a third (36%) of consumers noted that their choice was driven by the funeral director.¹⁸ The CMA should be cautious in drawing conclusions on choice of crematorium and competition in crematoria based on this distorted sample. Similarly, the survey refers to 60 respondents who did not compare crematoria but 30% of these indicated that the funeral director decided which crematorium to use.¹⁹ As explained in section 3.5 below, any issues around transparency at the level of engagement with the funeral director would be best addressed through appropriate remedies in the funeral directors market.
41. Fourth, the survey results are based on consumers that have been involved in cremation arrangements over the last two years. The survey also obtains a sub-sample of those involved only over the last year, but the results the CMA relies on to draw conclusions relates to the 'within two years' sample not the 'within a year' sample. This introduces a significant risk of recall bias, limiting the extent to which the overall results can be relied on, since it can be very difficult for consumers to remember information about a decision taken more than a year prior.
42. The importance of minimising recall bias is noted in the CMA Survey Guidance: "*Timing of last purchase is also important. If the last purchase was a long time ago, then respondent recall may be a problem. Much depends on the product or service being purchased.*"²⁰ The service being purchased in this case is particularly important in considering the potential for – and need to minimise – recall bias given the distressed state of mind the consumer may be in at

¹⁶ Good practice in the design and presentation of customer survey evidence in merger cases, CMA, Revised May 2018.

¹⁷ CMA Survey Guidance, paragraph 5.6.

¹⁸ CMA customer survey table 57.

¹⁹ CMA customer survey table 56.

²⁰ CMA Survey Guidance, paragraph 3.23.

the time of making the many decisions for the funeral or cremation arrangements and the relatively short period of time within which these decisions would have been made.

43. Finally, the representativeness of the sample can be tested by comparing the results with actual data where this is available. Table 38 of the consumer survey results provides a breakdown of the costs of the funeral. However, actual data reported by the CMA elsewhere in the Interim Report suggests that these costs are not representative of the wider population. According to the Interim Report, Royal London estimates the average cost of a burial are £4,267 compared to around £1,000 less for a cremation at £3,247.²¹ The CMA's consumer survey on the other hand shows the average costs of a cremation estimated to be higher than those of a burial (£3,653 vs £3,495) with clearly more respondents paying £4-5k for a cremation than for a burial, and less respondents paying £2-3k or £5k+ for a cremation. This is confusing as cremation costs are generally significantly lower than burial costs and suggests that respondents may have had higher than average cremation cost, with a potential bias therefore towards people who may be less concerned with the costs of a cremation or funeral arrangement.

3.2 A market investigation would impose a significant burden on the industry and risk deterring important investment

44. As set out in the Interim Report, the crematoria sector represents a relatively small part of the overall funerals market under consideration, with the CMA noting that the crematoria sector is of 'moderate' size. The CMA estimates total cremation revenues to be around £340 million, compared to approximately £1.3 billion for funeral director services. The market is largely comprised of relatively small operators, with only four private companies operating more than one crematoria (which together account for less than a third of all crematoria). Westerleigh itself, as the second largest operator, has total revenues of approximately £29.6m²² from cremation services and less than 300 employees.
45. Moreover, as noted above, the CMA's review of the funerals market comes at a time when investment in building new crematoria is fundamental to ensuring that there continues to be sufficient capacity to serve demand over the next twenty years and beyond. This growth in demand is driven by two trends:
- (a) The continuing trend towards consumers choosing cremation over burial: as noted in the Interim Report the proportion of funerals involving a cremation has increased from 35% to 77% since 1960. Westerleigh expects this trend to continue over the next twenty years given, among others, the increasing quality of crematoria (driven by private sector investment) and the significantly lower costs of cremations as compared to burials.

²¹ Interim Report, footnote 308. Similarly, Sunlife reported a basic funeral costing £4,271 while a funeral involving a cremation was on average £3,744 (i.e. around £500 less) - Interim Report, paragraph 2.14.

²² Financial year ending 31 December 2017.

- (b) The expected growth in deaths in coming years: while the mortality rate has generally been in decline in recent decades until 2016, Public Health England has predicted that with an increasing and ageing population there could be a 10% increase in the number of deaths by 2023²³; by 2040, it has been estimated that this will rise to around a 25% increase from 2014 levels.²⁴
46. Continued investment from the private sector will be crucial to deliver the capacity required to meet the expected growth in demand for cremations. As acknowledged in the Interim Report, over the past 30 years the vast majority of new crematoria facilities have been developed by the private sector, with the number of cremations carried out by private operators increasing by over 45% in the last 10 years alone.²⁵ Had this investment not been made, the existing stock of ageing and over capacity crematoria would be struggling to cope with increased demand, and absent a significant shift in Government policy there is no reason to believe that a material number of new local authority operated facilities will be delivered for the foreseeable future.
47. Westerleigh believes that the Interim Report does not take sufficient account of the importance of this private sector investment, nor the significant burden which a market investigation would place on the operators concerned both in terms of costs and the consumption of management time.
48. A market investigation would, moreover, place a heavy burden on local authorities. We understand from the Interim Report that in its initial evidence-gathering phase the CMA has spoken to 13 local authorities about their crematoria operations, but did not collect any detailed data from local authorities. Given that local authorities represent the majority of the crematoria market, it is clear that the CMA would have to gather significantly more evidence from authorities as part of a market investigation, placing a further constraint on already limited resources.
49. It is against this context which the CMA must balance the potential benefits to be achieved from conducting a full market investigation, with the burden which such an investigation would place on the industry and the risks which prolonged uncertainty would create for future investment in new capacity. For the reasons explained below, in Westerleigh's view these costs and risks outweigh the limited potential benefits which a market investigation could deliver, beyond those which the CMA could achieve through recommendations at the end of the current market study.

²³ Public Health England, Health profile for England: 2018, published 11 September 2018.

²⁴ BMC Medicine – see <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-017-0860-2>.

²⁵ Interim Report, paragraph 2.11.

3.3 The CMA's powers to address the features it has identified in relation to crematoria services are, to a significant extent, limited to recommendations to government

50. Westerleigh does not believe that there is a realistic chance that remedies would be available at the end of a market investigation such as to justify a MIR. While private sector investment has been driving the development of new crematoria in recent years, as set out in the Interim Report local authority crematoria continue to account for 70% of all cremations.²⁶ However, the CMA's powers under the Enterprise Act 2002 to remedy any adverse features of the market, in so far as they relate to these crematoria, are limited to making recommendations.
51. Westerleigh considers that this provides a relatively unique set of circumstances for a CMA market study, which appears to have been overlooked in the CMA's consideration of the appropriateness of making a MIR. This fact alone indicates that the potential benefits of undertaking a market investigation will necessarily be limited, since the CMA is already able to make any recommendations to government and/or local authorities it considers appropriate at the conclusion of its current market study. This is clear from recent cases, including the care homes market study (in which the CMA made a wide-ranging set of recommendations, the majority of which were made to government and local authorities) and the CMA's response to the recent super-complaint on loyalty payments (in which the CMA has made a raft of recommendations following a three-month review).
52. It is, indeed, notable that the majority of the potential pool of available remedies outlined in the Interim Report for crematoria services would involve recommendations to government:
- (a) The establishment of a funerals regulator.
 - (b) Guidance to local authorities.
 - (c) Changes to the planning system.
 - (d) Requiring the operation of existing local authority crematoria to be put out to tender.
53. These are all recommendations which can be made at the end of the market study, to the extent the CMA considers it appropriate to do so. In fact, only three of the potential pool of remedies outlined in the Interim Report are remedies which the CMA could impose directly itself following a market investigation. However, as set out below, Westerleigh believes there is in fact limited, if any, realistic prospect of these remedies being appropriate or, in any event, providing any material benefits in addressing any adverse features of the market identified by the CMA.
54. Given this fact, and the significant burden which a full market investigation would place on the sector (see above), Westerleigh strongly believes that the CMA should adopt a similar approach to that taken in other market studies and focus in the remaining part of the market study on developing and consulting on recommendations to government and/or local

²⁶ Interim Report, paragraphs 2.11 and 2.36. 183 out of 293 crematoria are operated by local authorities.

authorities in relation to crematoria services, rather than including crematoria services within the scope of any MIR. Westerleigh's views on the potential recommendations outlined in the Interim Report are set out in section 4 below.

3.4 **There are significant drawbacks and limited potential benefits associated with any remedies beyond recommendations to government**

55. As noted above, only three of the remedies contemplated by the CMA in relation to crematoria would involve utilising the CMA's powers under section 161 and Schedule 8 of the Enterprise Act 2002 following a market investigation: price regulation, divestments and a high-level concept of 'intra-crematoria' competition. Westerleigh considers that, even at this stage, it is clear that these remedies would not be appropriate, and in any event would provide limited potential benefits beyond those which the CMA can achieve through making recommendations at the end of the market study.

3.4.1 **Price regulation**

56. At paragraph 8.77 of the Interim Report, the CMA highlights the possibility of recommending to government to establish a specialist funerals regulator with powers to design, implement and enforce price regulation in relation to certain crematoria, before suggesting that it might design and implement an 'interim' price regulation mechanism applicable to privately-owned crematoria only.

57. While the CMA's comments in relation to the potential for price regulation in the Interim Report are high level, the CMA is required to consider whether there is a reasonable chance that a remedy of this nature would be available at the end of a market study. There are several reasons to suspect that this would not be the case.

58. First and foremost, the adoption of a divergent approach between local authority operated and private crematoria (i.e. by imposing price regulation in relation to private crematoria *only*) would give rise to significant risks of a distortion of competition in local areas, as well as difficult questions around compliance with rules on State aid and the freedoms to provide services and of establishment (including the Services Directive).

59. While local authorities in England, Wales and Northern Ireland are subject to requirements to charge for crematoria services on a cost recovery basis, even based on the CMA's limited analysis of local authorities to date it is clear that there is a wide variance in the approach which local authorities take in applying this requirement and many local authorities use crematoria revenues to subsidise other council services or budget deficits.²⁷ Moreover, local authorities in Scotland may price crematoria services as they see fit. The CMA therefore could not rely on this cost recovery obligation to apply price regulation to private operators only, and there would not be certainty that any recommendations which the CMA might make

²⁷ Interim Report, paragraphs 5.45-5.47.

regarding local authority charges would actually be implemented (or, even if they were, the speed with which they would take effect).

60. Second, the introduction of price regulation in a sector in which private operators continue to invest significantly in developing and upgrading new and existing crematoria, offering better quality and more choice to consumers, would give rise to a significant risk of unintended consequences. In particular, any cost-based price regulation would risk a reduction in the quality of service offered and the quality of crematoria facilities, as well as stifling investment in new facilities. As with any other industry, a private sector development will require return on capital sufficient to stimulate the investment in the new facility. This could hamper the efforts of Westerleigh and other private operators to increase provision and to meet the increasing need for additional capacity in the sector.
61. Finally, there are several factors which mean that, in addition to the risks above, price regulation is likely to be extremely difficult to implement in this market. In particular, crematoria services are not a uniform product, similar to those in relation to which price regulation has most commonly been imposed. As set out in section 3.1 above, qualitative factors are clearly of importance to consumers and would need to be accounted for in designing any price regulation. However, introducing an independent qualitative scorecard would be extremely complicated and, most likely, very costly.
62. Over and above these qualitative factors and due to the nature of the market, it would be very difficult to assess an appropriate price, taking account of the huge range of facilities and cost circumstances, spanning the older public sector facilities which are fully depreciated and new private sector facilities which have had significant investment, local factors, and the need to reflect the additional capital and operation expenditure incurred by private operators such as Westerleigh which are actively developing, managing and upgrading in a portfolio of sites.²⁸²⁹
63. For these reasons Westerleigh does not believe that there is a reasonable prospect that price regulation would be available as an appropriate remedy at the end of a market investigation. In any event, any price regulation imposed by the CMA in this manner would, by definition, only be designed as a short-term, temporary, measure targeted at less than a third of the crematoria market and would do nothing to address pricing concerns the CMA has identified in relation to local authority operated crematoria (accounting for 70% of cremations). There would be no justification for such a divergent approach give that, as noted above, once prices are adjusted for quality it is far from clear that private crematoria are on average relatively more expensive than local authority facilities.

²⁸ For example, prices often reflect investment in sites in terms of new cremators and other new facilities (such as second chapels, entrance foyer and waiting areas, toilets, tribute areas, acquiring land to extend memorial gardens, hospitality etc.).

²⁹ The position of private operators in this respect compares notably to local authorities, many of whose sites were built fifty or more years ago and which typically do not face these capital expenditure costs.

3.4.2 Divestment

64. At paragraph 8.81, the CMA contemplates the possibility of divestments of assets or operations, where two or more crematoria in a given areas are owned by the same operator. However, from the CMA's own analysis it is apparent that divestments would not be appropriate.
65. The Interim Report acknowledges that common ownership of crematoria is not a significant issue, with limited instances of providers owning more than one crematorium in close proximity to each other.³⁰ Moreover, the CMA's analysis shows that even where common ownership does exist in certain local areas, this does not result in higher pricing.³¹ It is therefore clear, even at this stage, that there is no reasonable prospect of the CMA imposing divestments in the crematoria market following a market investigation.

3.4.3 Intra-crematorium competition

66. At paragraph 8.83, the CMA refers to the possibility of introducing 'intra crematorium' competition. The CMA acknowledges that this would be "*complex to achieve in practice*", but in Westerleigh's view any such proposal would be ill conceived and impractical for even the largest crematoria (as well as highly confusing for mourners).³²
67. The introduction of a second operator at these sites would also create a significant duplication of costs (by requiring, for example, separate teams and office space), which would far outweigh any perceived benefits of enhanced competition at the site in question. In any event, as the CMA accepts, any such remedy would be limited to only the largest of crematoria, and therefore would have no impact in most local areas.

3.5 Transparency remedies in relation to funeral director services may have the potential to resolve any concerns regarding crematoria

68. It is also important that in reaching its decision on whether to make a MIR in relation to crematoria services, the CMA take account of the potential for transparency remedies imposed in relation to the funeral director services market to address its concerns regarding the crematoria market.
69. In particular, given that the funeral directors hold the direct relationships with consumers and represent the point at which those consumers exercise a choice between competing crematoria, the CMA could consider the scope for remedies requiring funeral directors to (for

³⁰ CMA Interim Report, paragraph 5.33.

³¹ CMA Interim Report, paragraph 5.54.

³² The management of cremators would become very difficult and inefficient with two operators and potentially would have serious health and safety implications. For instance, large sites with multiple cremators would typically only run one cremator at a time during less busy periods and two cremators are essential to avoid downtime when servicing or maintenance is required. Crematorium sites are also often held on long term leases, the terms of which may restrict such arrangements.

example) provide fuller information to customers on the range of crematoria options available and the associated costs.

70. Westerleigh believes that, alongside any recommendations which the CMA ultimately decides to make, this provides the potential for a more proportionate approach than including crematoria services within the scope of any MIR. Westerleigh, which already provides comprehensive information on its facilities, service and prices on its crematoria websites, would welcome greater transparency of information relating to the charges and the qualitative aspects of the available crematoria facilities being provided in this context to facilitate consumer choice.

4. **Views on potential recommendations to government considered in the Interim Report**

71. As set out above, Westerleigh believes there is limited scope for the CMA to directly impose effective remedies in relation to the supply of crematoria services at the end of a market investigation, given the significant proportion of the market accounted for by local authority facilities. In this section Westerleigh highlights additional comments regarding the potential recommendations to government outlined in section 8 of the Interim Report. To the extent the CMA determines that any such recommendations are appropriate Westerleigh believes the most proportionate approach would be to do so at the end of the current market study in lieu of making a MIR in relation to crematoria services.

4.1 **Sectoral regulator**

72. Paragraph 8.77 of the Interim Report suggests that the CMA might consider making a recommendation to government to establish a specialist sectoral regulator (or to extend the remit of any funerals regulator established in relation to funeral director services) with powers to impose price regulation, but that such a regulator should only be given such powers in relation to privately-owned crematoria.
73. For the same reasons as outlined in section 3.4 above, however, Westerleigh considers that there is no justification for taking a divergent approach between local authority and privately-owned crematoria, which would introduce a risk of a significant distortion of competition in local areas as well as questions around compliance with rules on State aid and the freedoms to provide services and of establishment (including the Services Directive).

4.2 **Planning laws**

74. The scope of the changes to the planning system contemplated at paragraph 8.79 and 8.80 are unclear, but to the extent they imply removing the current role of private operators in identifying and developing new sites and putting new site identification solely in the hands of local authorities, this would be more likely to impede, rather than promote, competition.
75. As set out above, the private sector has led the development of new crematoria over recent years. If this were left to local authorities the development of new crematoria would be likely to be significantly slower, if it happened at all. A key element of making a crematoria work,

operationally, logistically, commercially and to address planning issues is finding the right site. This can be challenging, time consuming and requires significant expertise and knowledge, with a specialist development team often essential (which, as noted in section 3.1 above, comes with significant costs attached).

76. Westerleigh believes that individual local authorities are unlikely to have the expertise to be able to identify and plan a site for a crematorium, and in many cases local authorities are also unlikely to control the land required to develop for a crematorium. Furthermore, where particular local authorities already operate crematoria, the local authority may be reluctant to seek new development opportunities to increase competition with their existing crematorium.
77. In any event, local authorities are currently able to develop crematoria, or identify council land and tender the operation to the private sector, and some authorities have already done this or have announced plans to do so.

4.3 **Tender of existing local authority crematoria**

78. At paragraph 8.82, the CMA outlines a possible remedy involving the operation of existing local authority crematoria being put out for tender. Westerleigh would welcome this proposal and believes that it could bring a significant enhancement to the quality of these crematoria, to the benefit of consumers, given the greater investment which private operators are likely to be able to make in upgrading these facilities (which in many cases are required due to the age of the facilities).

5. **Conclusion**

79. In conclusion, Westerleigh believes that the CMA's proposal to make a MIR in relation to the supply of crematoria services in the UK is not appropriate and would be more likely to have adverse effects than to result in remedies which would benefit consumers. The CMA's analysis in the Interim Report falls short of accurately reflecting the competitive dynamics in the crematoria sector and it has not demonstrated that there is a reasonable prospect of remedies being available at the end of a market investigation, beyond recommendations to government and/or local authorities, such as to justify imposing the significant costs and burden of such an investigation on the sector.
80. Westerleigh therefore considers that crematoria services should be excluded from the scope of any MIR which the CMA ultimately decides to make.