



# SAIFCharter

## Submission to the CMA

Consultation on proposals to make a Market Investigation Reference (MIR) with respect to the supply of services by funeral directors at the point of need.

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## 1. Introduction

SAIFCharter, an association of 762 independent funeral directors across the UK, who are both members of the National Society of Allied & Independent Funeral Directors (SAIF) and shareholders of Golden Charter Ltd., submit this document in response to the Competition and Markets Authority (CMA) consultation on the draft terms of reference for its proposed investigation into the at-need funeral market. Collectively, the members of SAIFCharter conduct approximately 40 per cent of all UK at-need funerals. As such, SAIFCharter welcomes this opportunity to contribute to the consultation.

## 2. The SAIFCharter Standard

Before presenting some general comments and submitting answers to the set consultation questions, SAIFCharter believes it would be useful to offer a brief background on the genesis of the association, an explanation of its purpose and an illustration of the slightly different lens that SAIFCharter may use vis-à-vis those of the sector trade bodies.

SAIFCharter's principal objectives are sustaining the independent funeral sector and the choice and diversity that it provides. The main vehicle that SAIFCharter employs is Golden Charter Ltd, a funeral planning company owned entirely by members of the association. Independent funeral directors established the company almost 30 years ago, in response to a pervading culture around dying that often meant families did not engage fully with the options available.

In encouraging people to consider funerals in advance, rather than at a time of familial distress, the founders were seeking to address the same fundamental issue that underpins the problematic market features identified in the CMA's interim report – that, in the midst of a bereavement, grieving families often find it difficult to assess their options. In seeking solutions, this group of independents identified early engagement with families, before the point of need, as a route that may lead to the societal behavioural changes required to remedy this underpinning core issue. This illustrates that SAIFCharter and its independent, often family-run funeral directors have been actively promoting the advantages of early engagement and pre-planning for decades.

By nature of their independent status, most SAIFCharter funeral directors also have deep roots in the villages, towns, and boroughs that they serve, being active members of their community. This independent, community-orientated ethos provides SAIFCharter funeral directors with opportunities to encourage families to plan for death and dying every day, in all that they do - through conversations in the community, family open days, visits to local community groups, and charitable partnerships.

In stark contrast to the overall market, 75 per cent of families purchase Golden Charter funeral plans directly from the funeral director who will ultimately deliver the funeral service. Buying directly from their local funeral director, families form a connection that is a very different relationship to those plans bought via a website, a central contact centre or a direct sales company. This approach – community-based, early engagement – encourages families to consider their options in advance, by building trust and engaging people in their own locality. It is worth noting that the SAIFCharter approach has been so successful that, almost without exception, when a conglomerate acquires an independent funeral director they continue to trade under the original local brand providing a false impression they remain at the heart of the community.

In considering the future market that would best serve our communities and families, SAIFCharter believes that the most significant remedy would be a fundamental shift in societal culture and behaviour towards death and dying. From a culture of reluctance to one where early conversations are a matter of course and where families plan and purchase funeral services at a time when they best able fully consider their options.

As staunch advocates of pre-need planning and with a commitment to maximising choice (SAIFCharter has always insisted Golden Charter customers be able to select whichever funeral director they wish to conduct their plan), SAIFCharter concur with the proposals presented in the CMA commissioned research paper – that families should be encouraged to access information and make arrangements before the point of need, when they will be 'more receptive' to the choice available.

Recognising, however, that pre-need engagement is not always possible, SAIFCharter has also sought to maximise choice for families at the point of need by facilitating easy access to local information over the internet. To this end, SAIFCharter instructed Golden Charter to develop an open and transparent website – [LocalFuneral.co.uk](http://LocalFuneral.co.uk) - to give bereaved families an opportunity to compare independent businesses across the UK on a level footing with the large retail chains. The 'Local Funeral' platform brings choice to those families who have not prepared in advance and, unlike most other websites, it offers real-time connection to the funeral director who will conduct the service and not to an intermediary.

SAIFCharter members rely on their reputation, trust and excellence to sustain and grow their businesses. That is why offering choice, delivering a quality service to the highest standards and, where families chose to prepay, providing complete security of funding are requirements of SAIFCharter membership.

In addition to upholding all SAIF standards, a significant proportion of SAIFCharter funeral directors are also members of the NAFD. Furthermore, SAIFCharter is currently in consultation with its membership on enhancing further SAIFCharter's commitment to best

practice in governance and providing the association with the authority and range of remedies to monitor and effectively enforce the highest professional standards in the sector, in line with contemporary regulatory expectations.

SAIFCharter notes that the CMA has set out a number of consultation questions at 9.6 of the interim report, which it has asked respondents to consider. Before detailing its substantive response to those consultation questions, SAIFCharter would like to offer some general comments on the proposed investigation.

### 3. General Comments

SAIFCharter welcomes the proposed market investigation and stands ready to embrace proposals that will give additional protection and choice and that reassure bereaved families that their loved one is with a funeral director who is effective, caring, responsive and safe. To identify appropriate market remedies that deliver such improvements for families, SAIFCharter believe that the investigation must:

**3.1. Evaluate societal attitudes towards death and dying and assess their impact on customer behaviour, both at the point of bereavement and before the point of need.**

SAIFCharter notes that, with over 4,000 funeral directors operating in the UK<sup>1</sup>, families have a greater choice in quality, range and price of funeral services than ever before. This includes direct cremation services starting from around £1,000, a range of simple funeral options and numerous possibilities for bespoke and personalised funerals, which could include, for example, woodland burials, individually designed coffins, bespoke transport arrangements and digitally streamed memorial services.

SAIFCharter believes that the unprecedented level of competition and innovation in the market has resulted in improved consumer awareness of choice and in more comparisons being made than in previous years. SAIFCharter recognises, however, even with recent improvements, that only 14 per cent of bereaved families are comparing more than one funeral director before making a purchase at the point of need<sup>2</sup>.

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<sup>1</sup> Real Business. (December 2017). The UK funeral business. RealBusiness.co.uk

<sup>2</sup>CMA. (November 2018). 'Funeral Market Study: Interim report and consultation'. HM Government

Given the wide choice that families now have - on service provider, price and range – SAIFCharter believes that the key to higher levels of customer engagement lies, not primarily on reforming the market, but, rather, in challenging societal attitudes on death and dying, to encourage earlier conversations and a culture of funeral planning, before the point of need.

With almost a third (31%) of families who purchased Golden Charter a plan in 2017/18 making a comparison with another provider, SAIFCharter believe that having earlier conversations on death and dying and planning funerals before the point of need, allows consumers the time and emotional space required to better engage with and consider their funeral market options.

Considering this, SAIFCharter believes that a coordinated, concentrated effort to change the societal culture around death and dying, to one of open conversations and early engagement, is required. With this in mind, SAIFCharter asks that, as part of its investigation, the CMA assess the potential benefits of encouraging families to consider their options and wishes, before the point of need and planning their funerals in advance.

**3.2. Be proportionate, with a real focus on those who hold the most market power.**

SAIFCharter notes that, in its interim report, the CMA found '*strong evidence that Dignity and Co-op in have been exercising their market power through high price increases, applied across their entire operations*' while independent funeral directors prices are, on average '*well below*' that of the larger providers. Considering this, while accepting that the scope of the investigation is likely to cover both independent funeral directors and large, corporate provers, SAIFCharter ask that the investigative focus is fair and proportionate, reflecting both the findings of the interim report and the reality of where market power sits and which firms are capable of wielding the most significant influence.

Similarly, SAIFCharter asks that the CMA assess proposed remedies in the context of other regulatory developments. For example, while the regulatory burden placed on funeral directors by a new regulatory body may seem reasonable in isolation, when considered alongside the likely burden of adapting to pre-need regulation and, where applicable, Scottish-specific regulation, there is a risk that small, independent funeral directors will struggle to adapt to a more structured regulatory environmental at the same rate as large, corporate providers. This is also true for the costs associated with implementing multiple tiers of regulation; the costs passed on

to funeral directors each, in isolation, may seem proportionate, but the stacking effect of costs could impact on the viability of small, independent funeral directors in a way which is not experienced by large, corporate providers, and thus reduce consumer choice.

**3.3. Investigate the full spectrum of markets that contribute to overall funeral costs.**

By providing a single point of contact through which the bereaved can arrange all aspects of a funeral service, funeral directors ease the burden placed on grieving families at a difficult time. However, of those costs that most commonly contribute to a final funeral bill, a significant and increasing proportion are charges applied by third parties. This could include, for example, local authority burial or cremation charges, church parochial fees, fees for the services of celebrants, florists and musicians, as well as venue hire and catering for the wake. If the CMA is to fully understand the dynamics of the at-need funeral market, then these third-party markets must also fall within the scope of the investigation. Particularly, SAIFCharter asks that all local authorities across the UK offering burial or cremation services, all private providers of burial and crematoria services, all major religious institutions offering funeral services, such as the Church of England and the Catholic Church, those bodies responsible for medical certification costs, and other relevant bodies, such as the General Register Office are brought within the scope of the investigation. With reference to the latter, SAIFCharter note that, from 16 February, a statutory increase in death certification fees will see the cost increase from £4 per certificate to £11 per certificate, a 175% increase, and a statutory fee of £35 for certificates required within 24 hours. Additionally, SAIFCharter asks that, when considering the influence of local authorities, special consideration is given to those authorities that have directly entered the at-need funeral services market, either by establishing their own arms-length funeral directors firm or by sub-contracting third parties to provide such services under local authority branding. As of January 2019, SAIFCharter are aware of eight authorities in England offering commercial funeral services (Salford, Halton, Gateshead, Brent, Cheshire, Nottingham and Sandwell), one in Wales (Cardiff), one established provider in Scotland (East Ayrshire) and a further two in development (Stirling and Dundee).

**3.4. Examine the interplay between quality and costs.**

SAIFCharter believes that quality of service and levels of care are more important to families than price and note that CMA commissioned consumer research supports this, concluding that only 6% of funeral organisers consider the price to be an important factor in their choice of funeral director. SAIFCharter accepts, however,

that there is a difference between partially inferred perceptions of quality and independently assessed empirical quality indicators that facilitate like-for-like comparisons. Considering this, SAIFCharter believes that, to effectively and comprehensively remedy customers' unresponsiveness to measures of price; they must be better able to relate prices charged to the quality of service and care offered. Considering this, SAIFCharter believes that CMA must assess the way in which the 'quality of service and care' intersects with all other features of the market, including costs, and that the quality of service and care should retain precedence throughout the investigation.

## 4. Consultation questions

### 4.1. Do you consider that the CMA's analysis is correct with respect to the suspected features of concern in the supply of services by funeral directors at the point of need (see paragraph 8.31)?

In its analysis, the CMA set out six features of the at-need funeral market that it reasonably suspects to prevent, restrict or distort competition; those features are:

- i. *Customers' vulnerability and difficulty in engaging at the point of need.*
- ii. *Customers' unresponsiveness to measures of price: they largely choose a funeral director on the basis of recommendation on personal experience.*
- iii. *Customers' inability to assess certain aspects of quality and the value for money of all options offered given funerals are an infrequent purchase and customers are often inexperienced.*
- iv. *Lack of transparency: reluctance of firms to publish/disclose clear prices (including online), or to provide comprehensive information on quality and range.*
- v. *Point-of-sale advantage: ability of suppliers to largely control the decision-making process leading to the sale and its outcome.*
- vi. *Ineffective self-regulation in respect of information transparency: no mandatory publication of online prices, absence of publication of inspection reports.*

While considering the CMA's analysis to be broadly accurate, SAIFCharter believes that the market features identified will be best remedied if they are understood in context. Considering this, SAIFCharter makes the following observations:

- a) Funeral directors recognise that, due to societal attitudes towards death and dying, the majority of families arranging a funeral at the point of need have not made price comparisons and that, due to the impact of bereavement, many may be vulnerable. It is because of this that the SAIF Code of Conduct explicitly forbids members from '*exploiting client vulnerability or exerting any pressure on them*' and instructs that members must make clients aware of the '*availability of a simple funeral*', including the option of an '*inexpensive*' coffin<sup>3</sup>. SAIFCharter accepts, however, that as a non-statutory regulator, SAIF's ability to enforce its Code of Conduct is limited, and that some funeral directors will not be a member of SAIF or the NAFD. Given this, SAIFCharter would support the introduction of an industry-wide Statutory Code of Practice.

<sup>3</sup> Society of Allied and Independent Funeral Directors (SAIF). 2018. *SAIF Code of Practice*. SAIF.



- b) The CMA found families to have difficulty engaging with the funeral market at the point of need. While SAIFCharter considers this analysis accurate, it also notes that the root cause of this difficulty is likely to be that, for the recently bereaved, 'shopping around' at the point of need, to understand and investigate the variety of services available and to consider price variation etc. is simply not the priority. While supportive of efforts to encourage families to better engage with the market at the point of need, SAIFCharter believes that because bereavement leaves many people in a state of grief, and given the time-pressured nature of arranging an at-need funeral, achieving a step-change in family behaviour at the point of need is a significant challenge. Considering this, SAIFCharter believes that, alongside market reforms, a coordinated, concentrated effort to change the societal culture around death and dying, to one of open conversations and early engagement, is required. With this in mind, SAIFCharter asks that, as part of its investigation, the CMA assess the potential benefits of early consumer engagement with the funeral market, as a potential solution to the challenge of changing at-need behaviour, when families are often in a state of grief.
- c) SAIFCharter notes that the CMA identified three underlying reasons why '*few consumers compare the quality of funeral directors*': that consumers partially infer quality from previous experience or recommendations, that consumers have little knowledge of how to assess standards and because consumers assume a certain uniformity in standards amongst funeral directors. While SAIFCharter continues to believe that quality of service and levels of care matter more to families than costs, SAIFCharter also recognises that there is a difference between partially inferred perceptions of quality and independently assessed empirical quality indicators that facilitate like-for-like comparisons. Considering this, SAIFCharter recommends that the CMA consider, as part of its investigation, the ways in which the market can better support families to assess the quality of service and levels of care between funeral directors, alongside costs.
- d) With reference to the interim report concluding that '*many funeral directors are reluctant to publish clear prices or provide comprehensive information on quality or range*', SAIFCharter considers this analysis accurate, as reflected in the Statement of

Scope consultation response, where SAIFCharter argued that *'industry transparency must be improved'*<sup>4</sup>. However, SAIFCharter would reiterate its view that, in the absence of an agreed cross-industry definition of a simple and standard funeral, families cannot easily make direct comparisons between services, even when costs information is available. An agreed cross-industry definition of a simple and standard funeral would give families confidence that they are comparing like-for-like and would give funeral directors the confidence to display price information on websites, knowing that the services they offer vis-a-vis competitors will not be misinterpreted. SAIFCharter have attempted to nudge the market towards an agreed cross-industry definition of a simple funeral by developing a simple funeral package, with agreed specifications, which all funeral directors who wish to appear on the Local Funeral.co.uk website must offer. The CMA should also be aware, however, that any single set of standard comparable specifications, set for the whole of the UK, would vary in relevance across regions and social groups. Considering this, SAIFCharter asks that the CMA evaluate the variance of cultural norms, as they relate to death and dying, by region and in the context of differing social and religious groups.

**4.2. Do you consider that the CMA's analysis is correct with respect to the reference test being met in relation to the supply of services by funeral directors at the point of need (see paragraph 8.12 to 8.37)?**

Under section 131 of the 2002 Enterprise Act, the CMA must first evidence *'reasonable grounds for suspecting'* that any feature, or combination of features of a market *'prevents, restricts, or distorts competition'* before making a market investigation reference<sup>5</sup>. SAIFCharter notes that, based on the six market features identified at 8.31 in the interim report, the CMA believes that it has established reasonable grounds to make a MIR.

Qualified by the observations listed in the preceding answer, SAIFCharter considering the CMA's analysis to be broadly accurate, and accept the CMA has established reasonable grounds to make a MIR. With reference to the scope of the MIR, outlined at paragraph 8.12 to 8.23, SAIFCharter makes the following observations:

- a) For the purpose of the investigation, the CMA considers the demand for funeral directors services to be *'essentially local'* and that funeral directors' markets *'operate*

<sup>4</sup> SAIFCharter. June 2018. SAIFCharter Response to the Competition and Markets Authority 'Statement of Scope' consultation. HM Government.

<sup>5</sup> Office for Fair Trading (OFT). (2014). Market Investigation References guidance: updated for the CMA. HM Government.

*at a local level'*. While accepting this as accurate, SAIFCharter notes that, as some large conglomerates command a UK-wide operation, while demand for funeral directors services may function within entirely localised markets, the supply of these services retains a UK-wide dimension. SAIFCharter believes that any investigation into local markets must consider the influence that large providers can exert over local markets because of their UK-wide scale. For example, this could be a UK-wide advertisement campaign, or higher prices in one localised market subsidising short-term promotional offers in another localised market.

- b) For the purpose of the investigation, the CMA defines third-party services, paid for via a funeral director, to be part of the funeral directors product market. This includes disbursements, such as burial plot fees, and discretionary services, such as death notices, memorials, venue hire, flowers and catering. SAIFCharter accepting that third-party services are part of the funeral directors offering and note that, by offering this single point-of-contact, funeral directors make the process of arranging a funeral significantly easier for grieving families. Predominately, the providers of third-party services are local businesses, owned and operated independently from the funeral directors. While funeral directors can negotiate with third-party providers and can terminate relationships with suppliers where cost, quality or range is not up to standard, funeral directors have minimal control over the pricing strategy of local newspapers, florists, hotels, or local authorities. This is particularly true of small independent funeral directors, whose scale of operation may limit their ability to negotiate with third parties over costs vis-à-vis large multi-branch providers. Considering this, SAIFCharter asks the CMA to consider the limited control funeral directors have over third-party costs, particularly limits placed on small independents, in any subsequent market investigation.

**4.3. Do you agree with the CMA's proposal to exercise its discretion to make a reference in relation to the supply of services by funeral directors at the point of need and to the supply of crematoria services (see paragraph 8.38 to 8.96)?**

SAIFCharter agrees with the CMA's proposals to make a reference. SAIFCharter notes that the CMA have the power to specify suppliers or local markets that will be the focus of the investigation, but have not done so stating that: *'our investigation to date has not identified any reasons to believe that those features [that prevent, restrict or distort competition] do not apply generally across all funeral directors'*.

SAIFCharter further notes that the CMA found *'strong evidence that Dignity and Co-op in particular have been exercising their market power through high price increases, applied across their entire operations'* while independent funeral directors prices are, on average *'well below'* that of the larger providers.

Considering this, while accepting that the scope of the investigation is likely to cover both independent funeral directors and large, corporate provers, SAIFCharter ask that the investigative focus is fair and proportionate, reflecting both the findings of the interim report and the reality of where market power sits and which firms are capable of wielding significant influence.

**4.4. Do you consider the proposed scope of the reference, as set out in the draft terms of the reference in Appendix F, would be sufficient to enable any adverse effect on competition (or any resulting or likely detrimental effect on consumers) caused by the features referred to in paragraphs 8.31 and 8.33 to be effectively and comprehensively remediated?**

In accordance with section 133(2) and (3)(b) of the 2002 Enterprise Act, SAIFCharter notes that the CMA shall confine its investigation to those six features, identified at 8.31 of the interim report, which it reasonably believes to prevent, restrict or distort competition between funeral directors offering services at the point of need.

SAIFCharter considers the scope of the reference to be sufficient but believes that, if the investigation is to identify the most effective remedies, then the intersectionality between the six market features identified and the culture of avoidance in talking about and planning for death and must also be investigated.

SAIFCharter further notes that, in confining its investigation to services offered by funeral directors, the CMA defines services offered by a funeral director as:

- *Guidance and support to the family;*
- *Collection and care of the deceased;*
- *Organisation and services carried out on the day of the funeral;*
- *The supply of goods and services to facilitate the arrangements, including, for example, the coffin, hearse and limousine(s);*
- *Intermediary services between the customer and third parties, such as crematorium or burial site, the doctor and the minister; and*
- *Discretionary services that are provided by the funeral director directly or as an intermediary between the customer and third parties, such as memorials, death*

*notices, venue hire and catering, flowers, the order of service etc.*

*But excluding:*

- *The provision of pre-paid funeral plans; and*
- *The provision of services provided pursuant to prepaid funeral plans.*

SAIFCharter broadly accepts this definition as accurate and particularly notes the inclusion of 'care of the deceased' and 'support for the bereaved' in the definition. SAIFCharter notes that, for many funeral directors, the delivery of support for the bereaved continues in the days and weeks after the funeral. Considering this, SAIFCharter asks that the CMA consider including post-funeral bereavement support within the definition, as an important service that is of value to bereaved families.

As expressed in its Statement of Scope submission, SAIFCharter believes that *'quality of service and levels of care and support should be an equal focus of any market investigation alongside costs'*. Expanding upon this, SAIFCharter believes that it is not possible to assess customers value for money without first understanding not just the range of services received for a given price, but the quality of those services, of which caring for the deceased and supporting the bereaved are significant components.

While approving of the inclusion of 'care for the deceased' and 'support for the bereaved' in the definition, SAIFCharter notes that questions remain over how investigators will assess the intersectionality between value for money and the care offered, particularly with reference to assessing the *quality* of care and support. Considering this, SAIFCharter would welcome the publication of additional information on this aspect of the proposed investigation, before the CMA makes reference.

Finally, SAIFCharter notes that the definition of services offered by a funeral director contained within the proposed scope of the reference includes third-party services, where those services are obtained via a funeral director acting as an intermediary. Considering this, SAIFCharter reiterates the point made at 2(b) and asks that the CMA to consider the limited control funeral directors have over third-party costs, particularly limits placed on small independent funeral directors vis-à-vis large multi-branch providers.

**4.5. Do you consider the features, which the CMA has identified, that may prevent, restrict, or distort competition are capable of being effectively and comprehensively remedied by UILs (undertakings in lieu of a MIR)?**

While accepting that some market features identified as preventing, restricting, or

distorting competition in the at-need funeral market could likely be remedied through regulatory intervention, SAIFCharter believes that one significant feature – *customer difficulty in engaging at the point of need* – is not easily remedied. Furthermore, SAIFCharter believes that, as this feature underpins many of the other market features identified, the CMA's ability to identify a solution to customer difficulty in engaging at the point-of-need will significantly influence its ability to effectively remedy the five other market features. Expanding on this, SAIFCharter offers the following comments on the ability to '*effectively and comprehensively remedied*' the six market features identified.

**a) Customers' vulnerability and difficulty in engaging at the point of need.**

The grief-induced vulnerability sometimes experienced by the recently bereaved is a naturally occurring, phenomenon. Therefore, SAIFCharter does not believe it is possible to effectively and comprehensively remedy vulnerability at the point of need, particularly given that few tasks are as intimately entwined with the sense of grief and loss experienced by the bereaved than arranging the funeral of their loved one. Consequently, SAIFCharter believes that early consumer engagement with the funeral market, before the point-of-need, coupled with holistic open engagement with other end-of-life provision stakeholders, could reduce the impact of grief-induced vulnerability on families' ability to engage them market, and asks that the CMA assess the potential benefits of preneed consumer engagement, as part of the investigation scope.

**b) Customers' unresponsiveness to measures of price: they largely choose a funeral director on the basis of recommendation on personal experience.**

SAIFCharter believes that quality of service and levels of care are more important to families than price and note that CMA commissioned consumer research supports this, concluding that only 6% of research participants consider the price to be an important factor in their choice of funeral director<sup>6</sup>. Considering this, SAIFCharter believes that, to '*effectively and comprehensively*' remedy consumers' unresponsiveness to measures of price, they must be better able to relate prices charged to the quality of service and care offered. For families to be able to do this, they must have access to information on quality as well as costs. Furthermore, both cost and quality information would have to be presented in an agreed format to facilitate meaningful comparison. While SAIFCharter believes that such remedy could be partially effective, it notes that other factors, such as the time-pressured nature of the purchase and inexperience in the market also contribute to consumer unresponsiveness to measures of price. Considering this, SAIFCharter believes that, encouraging meaningful price comparisons, contextualised by knowledge on the quality of service offered, would be most effective if families were encouraged to

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<sup>6</sup> Research Works. (October 2018). Qualitative Research Report. CMA.

make such comparisons before the point of need.

**c) Customers' inability to assess certain aspects of quality and the value for money of all options offered given funerals are an infrequent purchase and customers are often inexperienced.**

As previously stated, SAIFCharter believes that questions remain over how investigators will assess the intersectionality between value for money and the care offered, particularly with reference to assessing the quality of that care, and would welcome additional information on the matter. SAIFCharter notes that the Scottish Government have consulted on proposals to include, within the funeral cost guidance, *'measures suggesting that funeral directors should describe their processes for care of the deceased to help consumers understand costs associated with this'*. SAIFCharter supports this proposal and suggests that the CMA consider its potential effectiveness as a remedy. SAIFCharter further notes that the introduction of an inspection and licensing regime is referred to in the interim report as a potential remedy to families' inability to assess certain aspects of quality, on the basis that independent, statutory inspectors could provide families with trusted, comparable information on quality. SAIFCharter's support for such a proposal would be dependent on the principles that underpin any inspection regime.

**d) Lack of transparency: reluctance of firms to publish/disclose clear prices (including online), or to provide comprehensive information on quality and range.**

SAIFCharter believes that an effective and comprehensive remedy for a lack of transparency is achievable. For example, a legally enforceable code of conduct, with statutory definitions of a standard and simple funeral package and clear obligations to publish detailed price lists, could effectively and comprehensively remedy the lack of transparency identified in the market.

While a legal obligation to publish prices could improve transparency, SAIFCharter believes that for consumers to benefit, consumer behavioural change would also be required. For example, SAIFCharter notes that, for a majority of families, the price that they are predominantly concerned with is the 'headline' price for the funeral package and they do not always consider how these costs break down. Furthermore, as views on what should be included within a standard funeral differ from person to person, families often choose to purchase additional services, above and beyond that which is included in a 'standard' funeral package. As such, the final price some families pay for a funeral will differ from the 'headline' price that they originally noted.

**e) Point-of-sale advantage: ability of suppliers to largely control the decision-making**

**process leading to the sale and its outcome.**

SAIFCharter believes that the majority of funeral directors are acutely aware that families arranging a funeral at the point-of-need are, to varying degrees, vulnerable and, as such, provide the customer with access to a range of options to empower them as consumers to have control of the decision-making process. Likewise, SAIFCharter believes that the majority of funeral directors are sensitive to other factors, such as age, mental health and disability, which may intersect with the sense of grief to further increase vulnerability, and will adapt their approach accordingly. SAIFCharter notes that the SAIF Code of Conduct requires that members make clients aware of the '*availability of a simple funeral*', including the option of an '*inexpensive*' coffin. Nevertheless, SAIFCharter accepts that as a non-statutory regulator, SAIF's ability to enforce its Code of Conduct is limited and that some funeral directors will not be a member of SAIF, Scottish SAIF or the NAFD. Considering this, SAIFCharter believes that remedies that give families better access to easily compared information on cost, range and quality could effectively and comprehensively recalibrate control of the decision-making process in their favour.

In supporting remedies for improving customer access to easily compared information on cost, range and quality, SAIFCharter would urge a note of caution, however, in relation to price comparison websites. In theory, price comparison websites could benefit families by increasing competitive pricing pressure on firms and providing them with greater cost choice. However, such price comparison sites often charge funeral directors a fee or commission for introducing sales that, conversely, can increase prices for all customers<sup>7</sup>. Whilst a cap on price comparison website fees could limit their adverse impact on costs, such websites value to the funeral market may also be inhibited by the localised nature of funeral markets. For example, while a consumer using a price comparisons website to compare car prices may be willing to travel across the country to purchase a vehicle at the cheapest possible price, such a scenario would not readily translate to the funeral market. SAIFCharter also note that, where such comparison sites facilitate comparisons on price alone, it can result in families making choices based on a narrow remit, and not taking into account who can best meet their needs in terms of quality of care and range of services. Taking such consumer behaviour into mind, the reality for any price comparison website in the funeral market is that, to have a genuine and positive impact on families, the site would have to provide a highly localised, bespoke search facility, based not just on UK regional markets, but at the level of boroughs, city districts, towns, and villages and must provide information on quality and range as well as information on costs.

**f) Ineffective self-regulation in respect of information transparency: no mandatory**

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<sup>7</sup> Ronayne, D. (2015). Price Comparison Website. Warwick Economic Research Papers. No: 1056.



**publication of online prices, absence of publication of inspection reports.**

SAIFCharter notes that neither the SAIF, Scottish SAIF nor the NAFD Code of Conduct mandates members to publish prices online or publish inspection reports. As voluntary regulators, without statutory powers, all three bodies rely on funding from members to cover operational costs and must consider their capacity to monitor and enforce compliance before introducing new, voluntary regulations. Scottish SAIF recently introduced a new requirement, necessitating all members to provide refrigerated care for the deceased. On the back of this reform, Scottish SAIF expelled several members for non-compliance with the new code of practice, however, as a voluntary regulator, these firms continued to practice, with expulsion bringing limited impact on their operation.

In light of this, SAIFCharter believes that the introduction of a legally enforceable code of conduct, with statutory duties placed on funeral directors to publish online prices and inspection reports, could be an effective and comprehensive remedy to the CMA' perception of a lack of self-regulation regarding both features, but only if compliance is effectively monitored and enforced. Considering this, SAIFCharter asks that the CMA consider compliance and enforcement capacity, within the Scope of the investigation.

**4.6. Do you have any views on our current thinking on the types of remedies that a MIR could consider (see paragraphs 8.66 to 8.86 above)? Are there other measures we should consider?**

SAIFCharter notes that the interim report details four broad categories of remedial action in relation to the funeral services market.

- a) *Transparency remedies;*
- b) *Changes to the regulatory framework;*
- c) *Establishment of a regulatory body;*
- d) *CMA-led price regulation.*

SAIFCharter will comment on each, in turn.

**a) Transparency remedies**

The interim report refers to the direct powers of the CMA to take a number of transparency remedies. This included that ability to require funeral directors '*to make their price lists available online and set out their price lists according to a standardised format and/or distinguish clearly between the price for those elements of a funeral which are essential, optional, and third party costs*'. While supportive of such transparency remedies, SAIFCharter notes the importance of consulting extensively on any definitions

of standard or simple funeral packages or standardised format for publishing prices, before implementation.

SAIFCharter also asks that, in assessing market transparency, the CMA consider the ease by which members of the public can deduce who owns and manages a firm. Given that the same firm could own two funeral directors, in the same town, offering identically costed packages, while both retain separate, historical names and operate under different branding, bereaved families may be misled into believing they have made a comparison when, in fact, they have not. Whilst respecting the right of conglomerates to use branch-specific branding, SAIFCharter believes that all branding and marketing material – from shopfront signage to local leaflet drops - must make clear who has ultimate ownership of the branch. The clarity should be such that no family could unwittingly approach another branch of the same company trading under a different name, when seeking comparison.

#### **b) Changes to the regulatory framework**

SAIFCharter notes that the CMA could recommend that the UK government legislate for a statutory code of practice for England, Wales and Northern Ireland and a licensing regime for funeral directors. SAIFCharter further notes that, in the interim report, the CMA suggests that such changes to the regulatory framework could *'help ensure that the quality of service provided by a funeral director for activities that happen 'behind the curtain' is appropriately regulated and could 'help people make meaningful comparisons between funeral directors'*. Considering this, SAIFCharter offers in-principle support for a statutory code of practice but notes that final support would be dependent on the content of the code. Similarly, SAIFCharter accepts, in principle, the potential benefits of a licensing regime, but only where such a regime:

- i. Safeguards families ability to choose between corporate providers and local independent funeral directors;
- ii. Is designed in such a way that it does not result in unnecessary extra work for funeral directors and their team, as this may inadvertently drive up costs for families.
- iii. Is responsive to market innovation and allow the notion of 'best practice' to keep abreast of technological and social developments, within the capabilities of the consumer group that it is designed to protect.

#### **c) Establishment of a regulatory body**

SAIFCharter notes that the CMA could recommend that the UK government pass legislation to establish a new regulatory body, with statutory powers. SAIFCharter further notes that, in the interim report, the CMA suggests that such a statutory body

could, as part of its responsibilities, play a role in '*constraining the prices of funerals*' as well as actively monitoring the quality of service provided. While open, in principle, to the idea of a statutory regulator, SAIFCharter believes that the CMA must assess this proposal in the context of other regulatory developments. For example, while the regulatory burden placed on funeral directors by a new regulatory body may seem reasonable in isolation, when considered alongside the likely burden of adapting to preneed regulation and, where applicable, Scottish-specific regulation, there is a risk that small, independent funeral directors will struggle to adapt at the same rate as large, corporate providers. This is also true for the costs associated with implementing multiple tiers of regulation; the costs passed on to funeral directors each, in isolation, may seem proportionate, but the stacking effect of costs could impact on the viability of small, independent funeral directors in a way which is not experienced by large, corporate providers. Particularly, this could have a disproportionately negative impact on rural funeral provision, where small, family-run firms are often prevalent.

Considering this, SAIFCharter believes that any regulatory body established should be as cost-effective and proportionate as possible. With this in mind, SAIFCharter also asks that the CMA consider other options, such as recommending that the UK government pass legislation to give the current voluntary regulators statutory powers.

**d) CMA-led price regulation**

SAIFCharter notes that the CMA could '*design and implement a price regulation mechanism for an initial period pending the setting up by government of a funerals regulator*'. SAIFCharter is concerned by this proposal and believes that the CMA should retain this only as an option of last resort. With SAIF and the NAFD representing over 75% of funeral director branches between them, SAIFCharter believes that the CMA could work with the trade bodies to ensure costs are not artificially inflated during any post-announcement pre-regulation period.

**4.7. Quality of care of the deceased: we have received anecdotal evidence that there may be varying standards of care being applied by funerals directors and would like to understand how widespread such issues may be. We would, therefore, like to hear from people who have witnessed standards of care which they consider to be unacceptably low.**

While the Scottish Government's Inspector of Funeral Director's Annual Report for 2017-18 notes a '*positive response*' from the industry, an '*openness and desire to engage*' and a '*significant drive*' amongst funeral directors to understand the future requirements of the

public, the inspector also notes a small number of serious complaints received<sup>8</sup>.

This includes a concern raised over a funeral director presenting a coffin for cremation with leaking fluids, a funeral director presenting a damaged coffin for cremation, a case regarding the manner in which a funeral director took the deceased into care and a case of misidentification regarding two deceased men with the same name collected from the same NHS mortuary.

While confident that such cases are extremely rare, SAIFCharter also believes that these cases highlight, at a fundamental level, that the quality of service and standard of care offered can affect grieving families in ways they are not fully aware and in ways that costs cannot. Considering this, SAIFCharter believes that CMA must assess the way in which the '*quality of service and care*' intersects with all other features of the market, including costs, and that the quality of service and care should retain precedence throughout the investigation.

**4.8. Issues specific to religious groups that are not covered in this report: we have focused our work on the transactional aspect of funerals involving funeral directors and crematoria. We believe that the issues we have identified in relation to those specific aspects would essentially be similar across all faiths (to the extent that the way they organise funerals involves transactions with funeral directors or crematoria). We are keen to find out whether we may have overlooked any issue of relevance and will seek to engage actively with the representatives of the major faiths.**

SAIFCharter notes that On 17 May 2018, the Chief Coroner for England and Wales, Judge Mark Lucraft QC released new guidance that specified coroners must consider whether a particular case should '*be treated as a matter of urgency...for religious reasons*'.

Considering this, SAIFCharter believes that religious belief may influence the importance placed on the speed at which a funeral director can arrange a funeral. The ability of funeral directors to meet such religious requirements may, in turn, restrict some families' choice in the marketplace and potentially drive up their costs. Considering this, SAIFCharter asks that the CMA assess the impact that specific religious needs, particularly the need for arrangements to take place within a certain timeframe, has on the price, range and quality of options available to families in any subsequent market investigation.

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<sup>8</sup> McKail, N. (August 2018). *Annual Report: Inspector of Funeral Directors 2017-18*. Scottish Government.

END

For further information or clarification, please contact, John Byrne, Secretary of the SAIFCharter Association by email at [secretary@SAIFCharter.co.uk](mailto:secretary@SAIFCharter.co.uk) or by telephone on 0141 931 6379.