

## **Funeral Partners' response to CMA consultation on funerals market study interim report**

### **Introduction**

Funeral Partners welcomes the Competition and Markets Authority's (**CMA**) market study into the funerals market. We recognise that it is timely given the period that has now elapsed since the Office of Fair Trading (**OFT**) last examined the market, and that there are potential industry-wide changes which would be of benefit to consumers.

We wish to continue to co-operate very closely with the CMA as it consults on the proposed market investigation reference (**MIR**), and Funeral Partners is grateful to the CMA for the opportunity to comment as part of its consultation process. We would also like to thank the CMA for the time given to us during the face-to-face meeting in December 2018.

In line with Section 9 of the interim report, Funeral Partners wishes to comment on the following:

1. Quality and direct overall correlation with price
  - Care of the deceased
  - Legislative compliance
  - 'Front-of-house' quality
2. Features in the supply of funeral services
  - Quality generally
  - Vulnerability
  - Ownership transparency
3. Potential remedies
4. The proposal for an MIR
5. The scope of any proposed MIR (Appendix F)

### **1. Quality and direct overall correlation with price**

We note from the interim report that the CMA considers it had not been provided with sufficient evidence for it to conclude that price differentials between suppliers could be explained by quality differences. Funeral Partners nevertheless remains firmly of the view that there is a direct link between the overall quality of service provided and the price paid by the consumer.

We appreciate that the CMA has requested more evidence in relation to quality and, in particular, standards relating to care of the deceased ('back-of-house' quality). However, in addition to meeting certain minimum standards to ensure appropriate care of the deceased, we consider that 'back-of-house' quality extends to the need to adhere to broader legislative compliance requirements as well and, as we explain further below, each of these has a direct impact on price.

Moreover, we remain of the strong view that 'front-of-house' quality continues to be an important differentiating factor between funeral directors which leads to repeat custom, and comes at a cost – of which a proportion is passed on to the consumer.

Funeral Partners invests heavily in these three critical areas of quality (care of the deceased, legislative compliance and 'front-of-house') and these investments are, in turn, specific cost elements which directly factor into the overall price paid for funeral services.

[§].

*Care of the deceased*

As the CMA has recognised, perceptions of quality will not usually extend to ‘back-of-house’ standards in the eyes of consumers. However, this is something we believe is nevertheless of substantial importance to consumers, albeit there is limited awareness of the differences in ‘back-of-house’ standards and divergent industry practices. This is largely due to common misconceptions amongst consumers including, for example, that the industry is already regulated and/or that all ‘back-of-house’ treatment and facilities will be much the same.

On the contrary, ‘back-of-house’ standards vary dramatically in practice, and we believe this is particularly the case [X] given the lack of industry-wide regulation or any independent inspection regime. [X].

[X] although many [X] funeral homes [X] have ‘back-of-house’ standards commensurate with Funeral Partners’ quality, a number have lower standards. [X] (see sub-section below on ‘Legislative compliance’).

We perceive low and inadequate quality in relation to care of the deceased to include, without limitation, the following aspects:

- Lack of any refrigeration facilities for the deceased
- Insufficient refrigerated storage capacity for the deceased leading to ‘topping and tailing’ of more than one corpse on single trays in busier times
- Lack of any mortuary facilities, with the deceased instead left on the floor until the client is ready to view
- Lack of any identification procedure for the deceased, increasing the risk of incorrect identification of the deceased
- Lack of any documented processes around the procedure for handling and storing ashes, increasing the risk of incorrect identification of ashes
- Compromises on the quality of care shown for the deceased not apparent to the consumer e.g. no lining in the coffin when the body is not to be viewed by a family
- Lack of appropriate vehicles and equipment for transfer of the deceased
- Lack of appropriate embalming facilities including, for example, appropriate drainage and ventilation

[X].

We believe that the vast majority of consumers take quality for granted in relation to how their loved one’s body is being cared for, assuming incorrectly that there are mandated quality standards which apply. In reality, there are significant discrepancies between providers.

We fundamentally believe that consumers already expect and would want high standards implemented in relation to ‘back-of-house’ treatment of the deceased. We would not wish the industry to see certain aspects of quality in relation to care of the deceased as merely ‘optional’, or to make certain unacceptable compromises in the level of care. As such, Funeral Partners invests a significant amount of cost and resource in order to ensure our entire business achieves the standards we have set in relation to the quality of care of the deceased. A rigorous audit regime is in place which audits every funeral home within Funeral Partners in order to monitor standards continually and to manage any non-compliance.

We accept that individual funeral providers in theory could do more to explain to the consumer the differences in quality in relation to ‘back-of-house’ standards (in order to differentiate themselves from competitors), but we also perceive there to be a general nervousness in the profession to

address these topics 'head on' with consumers given the generally taboo nature of these matters in society. We consider that consumers simply expect that the 'back-of-house' treatment of the deceased is uniformly of a certain minimum standard. However, in reality, consumers would not wish to face the risk of receiving a sub-par service as a result of looking to spend less (e.g. where care of the deceased involved their loved one being on the floor without refrigeration, or where there were increased risks that their loved one may be incorrectly identified).

In our experience, consumers rarely enquire about 'back-of-house' practices and would wish to avoid discussion of how the deceased's corpse is stored. In our view, it is preferable for the industry to match consumer expectations as to 'back-of-house' quality standards, so that consumers can rely on the fact that minimum standards apply uniformly across the board.

In line with our comments below on remedies, Funeral Partners is therefore supportive of a regulatory framework in order to establish minimum industry-wide 'back-of-house' standards. We believe that this would enable more of a level playing field in relation to 'back-of-house' standards through ensuring that all funeral businesses are equally obliged to commit the required costs to support high quality standards concerning care for the deceased. This would, in turn, allow for fairer comparisons between funeral directors. It would also ensure that consumers are not forced to consider - at a time of grieving - a range of 'storage' or 'treatment' options for the deceased 'back-of-house', and can instead have confidence when comparing options that these matters are dealt with in an equivalent manner by competing funeral directors.

#### *Legislative compliance*

[X].

Whilst the CMA has not asked explicitly for detail concerning legislative compliance, we believe that this is an important aspect to highlight in relation to provision of quality and also comes at a cost, of which a proportion is borne by the consumer.

[X]. Potential areas for the CMA to consider are:

<b>Pension irregularities</b>	[X]
<b>Minimum wage and working time</b>	[X]
<b>Asbestos</b>	[X]
<b>Fire safety</b>	[X]
<b>Electrical safety</b>	[X]
<b>Pre-need</b>	[X]
<b>Data protection</b>	[X]
<b>Holiday pay</b>	[X]
<b>Anti-corruption</b>	[X]

### *Other non-compliance*

[REDACTED].

[REDACTED].

[REDACTED].

### *Overall commentary on legislative compliance*

[REDACTED].

[REDACTED] it is clear that some funeral homes are falling short on legislative compliance matters and this can, we believe, distort funeral charges. [REDACTED].

Many of the above legislative compliance requirements are, of course, applicable to a wide range of businesses operating across sectors. Regulatory compliance, while it comes with an associated cost, is clearly a necessity and we note that businesses should not use non-compliance as a way to reduce overall costs and therefore potentially undercut competitors who seek to adhere to their regulatory obligations. To do so would place the safeguarding of customers and workers in the business at risk.

### *'Front-of-house' quality*

In section 6.46 of the interim report, the CMA recognises that the quality of aspects such as the presentation of the premises and staff, along with the quality of the fleet, vary across funeral directors. Whilst it is claimed in the report that such aspects of quality are important factors in the choice of funeral director for only a very small proportion of customers, we fundamentally believe that the quality of our people, fleet and premises allows customers to judge quality, differentiates us from our competitors, and in turn drives repeat business. As cited in our response to the CMA's statement of scope for the market study, Funeral Partners' investment in people, premises and fleet comes at a significant cost and this cost is a direct factor affecting the price paid by the consumer for our funeral services. We also comment more broadly in relation to customers' perception of quality below.

## **2. Features in the supply of funeral services**

We comment below on three aspects in the interim report concerning features in the supply of funeral services, namely:

- Quality generally
- Vulnerability
- Ownership transparency

### *Quality generally*

We note from the interim findings that the CMA appears to question the extent to which consumers may or may not use quality as a determining factor in their choice of funeral director. However, Funeral Partners remains firmly of the view that quality is a significant factor in the choice of funeral director. We do not consider, therefore, that the CMA's interim findings are fully reflective of the breadth of factors in operation when customers choose a funeral director and funeral package.

Primarily, consumer choice will be based on perceptions of 'front-of-house' experiences prior to being bereaved. These experiences may emerge from personal experience, recommendations and/or reputation. This is supported by the CMA's consumer research findings, for instance that the most frequently cited factor in the choice of a funeral director was personal experience of using the funeral director before or attending a funeral the director concerned had arranged.

The CMA does not attribute much weight to the high client service scores and low level of complaints experienced in the industry and, as a result, we consider that the CMA's interim findings here are unbalanced. Funeral directors only get one chance to get the funeral right for the consumer, and, even at a time of significant and heightened emotional customer distress, we firmly believe quality remains front-and-centre in the mind of the consumer in order to give their loved one the send-off they desire.

To expand on this point, from analysis of our 'Reflective Comments' card responses, in the months of October and November 2018, Funeral Partners observed that [X]% of our funeral customers derive from personal experience or from friends or family recommendation – [X]% said that they had used us before, [X]% had attended a funeral we had conducted, [X]% were recommended by friends or family and [X]% were recommended by a professional institution or person, demonstrating third party perceptions of quality. Only [X]% did not derive from a recommendation or direct experience.

As a result, many customers have already experienced the quality of our funerals directly, or through a trusted contact, and this drives their choice of funeral director and product/package selection when they come to be tasked with organising a funeral.

As explained above, in its interim findings we believe the CMA has not given sufficient weight to the importance of quality in driving customer choice when selecting a funeral director. Reputation is of paramount importance in the funeral industry and successful funeral directors recognise how quality is determinative of future custom. Quality appears very much from the CMA report to be a secondary consideration to price-related factors, as far as consumers are concerned, and in reality we do not consider this to be the case.

### *Vulnerability*

Funeral Partners recognises that, at the point of bereavement, most customers will be in a vulnerable state of mind. In line with the CMA's own research (and that of Funeral Partners), it can nevertheless also be noted that the choice of funeral director in many instances will have been made *prior* to the death occurring and when consumers are arguably much less emotionally vulnerable.

Perceptions of quality, and in turn the choice of a funeral director, are often formed before becoming emotionally vulnerable. Customers become more 'funeral aware' in later life and will discern quality from direct or indirect experience before they themselves are bereaved. Whilst we accept that research suggests that, at the point of need, some customers may not be explicitly and consciously comparing funeral directors, this still allows for the fact that prior to the point of need, customers are making comparisons and judging quality dispassionately for themselves. For example, we have already stated that in October and November 2018, from analysis of our 'Reflective Comments' card responses, [X]% of our customers came to us having attended one of our funerals previously and so clearly made that decision before they themselves experienced bereavement and became vulnerable.

To expand on the points above, we consider that the CMA's interim findings should give more weight to the fact that many consumers already have firm and pre-determined views on the type of funeral they want to secure, either based on their existing preferences or the previously communicated desires of the deceased.

Consumers often have set views on their own perceived markers of quality which they wish to ensure are reflected in the funeral they ultimately select. We are of the view that the CMA report does not address in appropriate detail the importance of non-price considerations in the customer's decision-making processes.

In terms of CMA suggestions of funeral directors engaging in a hard sell, while we recognise this may conceivably arise in certain instances in the industry, in our experience this is extremely rare and not borne out in practice. Providing a truly bespoke funeral that reflects the deep-seated personal choices of customers is at the heart of any successful funeral director's work. This, by necessity, will entail the provision of a number of options for products and services in order to tailor the funeral – and this ability to choose from a variety of available options is something we consider is vital to ensuring customers get the funeral they desire for their loved one. Increasing personalisation is becoming an ever more important factor in customer funerals.

Funeral Partners considers the behavioural economics aspects regarding funerals should feature more prominently in the CMA's market study findings, as currently the interim report overly focusses on price-related aspects. The language in the interim report suggests funeral directors often exploit customer vulnerability and the CMA adopts emotive language in this regard such as 'extreme vulnerability' and repeated use of the terms 'control' and 'exploitation'. The low levels of customer complaints demonstrate the generally very high levels of customer satisfaction. Funeral Partners' own customer questionnaire responses completed after the funeral indicate that customers perceive they have made optimal decisions regarding the funeral choices made and package selected.

The low level of complaints after the event, and when further time has elapsed since the immediate loss of a loved one, is indicative that in the vast majority of cases customers do not feel taken advantage of or exploited at a time of vulnerability. We consider in this respect that the CMA has not given sufficient consideration to customer patterns of behaviour in its interim conclusions and has as a result inaccurately diminished the importance of customer satisfaction, personal choice, and non-price factors such as quality.

#### *Ownership transparency*

In relation to transparency of ownership in the industry, we believe it is important that ultimate ownership is visible to the client. This is something which currently happens in practice as regards Funeral Partners, with all our acquired homes having Funeral Partners' ownership declaration either on the main sign or in the window of the funeral home. There is no attempt to 'hide' Funeral Partners' ownership of the newly acquired firm. Rather, any marketing materials and point of sale materials will be branded Funeral Partners, and the contract itself is between the client and Funeral Partners. Funeral Partners funeral homes display ownership in this way, along with a declaration visible to the client at each premises. Ownership transparency requirements have also been set out in previous OFT findings as well as forming part of the NAFD's code of practice.

We believe it is crucial for independent funeral homes to be able to sell their businesses. It is also key in this respect that the goodwill in the name above the door can be retained, both in terms of the value of the business being acquired and for those customers who value continuity of the name

for historic reasons, even if ultimate ownership changes. In addition, Funeral Partners' model in relation to former owners is to encourage the former owner (along with any of their relatives) to be retained in the funeral home in order to continue the family-run tradition. Provided there is clarity regarding ultimate ownership, we consider it is of great benefit to all concerned to retain the existing goodwill associated with the name of the acquired businesses.

### **3. Potential remedies**

In relation to the appropriateness or otherwise of the types of potential remedies the CMA has referenced at paragraphs 8.67 to 8.75 of the interim report, we note the following:

#### *Transparency remedies*

- We support making prices available online and having funeral firms set out their price lists according to a standardised format and/or distinguish clearly between prices for each agreed element of a consistently defined 'simple' funeral
- However, in line with our comments above, we firmly consider that the optimal way to ensure that the customer has the ability to make a like-for-like comparison in relation to prices is to ensure that there is a level playing field regarding 'back-of-house' standards (particularly in relation to quality of care of the deceased) and also adherence to broader legislative compliance requirements
- We are supportive of further consumer guidance from government sources in relation to what to do when someone dies, and also for any generic advice about considerations for consumers in relation to choosing a funeral director

#### *Changes to the regulatory framework*

- We support the introduction of a statutory code of practice for England, Wales and Northern Ireland and/or some kind of mandatory licensing regime. We believe that this would drive up standards across the industry and deliver the level playing field required to enable fairer comparisons between funeral directors

#### *Establishment of a regulatory body*

- We support the establishment of an independent funeral regulator and inspection regime in order to monitor actively the levels of service being provided
- We would not support a regulator in relation to the setting of prices of funerals and we consider this to be a disproportionate and overly interventionist response that is fundamentally unsuitable given the flexibility needed in order for funeral services to respond to a wide range of personal preferences and a multitude of differing customer requirements
- However, we accept and would welcome the regulator taking a view on what the core elements of a 'simple' funeral should comprise, in addition to setting out standards in relation to how best to support the most vulnerable customers

#### *CMA-led price regulation*

- We do not consider that interim CMA-led price regulation (ahead of the establishment of a regulator) would be a proportionate response. As noted above, it would be highly interventionist, costly to implement and may lead to adverse effects on quality given the bespoke nature of funeral choices, and since funerals are becoming increasingly personalised
- Instead, we believe that the majority of the industry (e.g. via the two existing trade bodies which together capture c.75% of the industry) could commit to addressing some of the concerns raised by the CMA in the interim, ahead of any new regulatory framework and body being fully established

#### **4. The proposal for an MIR**

We note from the interim report that the CMA considers the reference test is met and that the CMA is presently minded to make an MIR. However, we note that an MIR is only one possible outcome of a market study and that the CMA has several options open to it where a market study suggests that a market is not working well.

In our view, it is preferable for the CMA now to recommend legislation alongside guidance for customers. Based on the evidence set out in its report, an MIR is not the most appropriate course of action in the circumstances. We consider that the CMA should not exercise its discretion to make an MIR due both to the need for a comprehensive and clear legislative solution applicable across the industry and the need for fundamental changes to the regulatory framework applicable to funerals which would be best effected by legal reform. Rather than an MIR, we consider that the outcome of the market study should be CMA recommendations for legal reform, combined with campaigns and guidance to promote greater consumer education and awareness in relation to funerals.

It is important that any recommendations can be applied industry-wide and, given the current self-regulated nature of the industry, the fact that the industry bodies do not have nationwide coverage and the absence of a mandatory licensing regime, government-led regulation seems the most appropriate approach. We recognise that undertakings in lieu (**UILs**) will not be appropriate for the industry at this stage since it is highly fragmented with a large number of market players. While we note that the OFT when it previously examined the market considered new legislation was disproportionate, given that today self-regulation through industry codes of practice would not capture all of the market, we consider regulatory reform is now required.

We strongly urge that, rather than incurring the unnecessary additional time and substantial cost of a market investigation (for businesses, the taxpayer and consumers), the CMA instead makes recommendations to proceed directly with regulation and that the industry is consulted on the details of any regulatory framework/body/mandated minimum standards. This would be more akin to the process already happening in Scotland, potentially with some additional powers and protections.

As per our commentary above, Funeral Partners does not broadly disagree with many of the potential remedies the CMA currently deems appropriate outcomes. We are also of the view that any market investigation would be very likely to make similar recommendations. We do not consider that the additional insights gained from a detailed review over the course of a further 18 months (or longer) would justify the significant cost and delay associated with a market investigation. The CMA should take steps now, following its market study interim findings, to call for legislative reform and publish consumer guidance. We urge the CMA to carefully reconsider whether it is justified and appropriate for it to exercise its discretion to make an MIR.

#### **5. The scope of any proposed reference (Appendix F)**

Were the CMA nevertheless to proceed with making an MIR, we consider the scope of the reference should be limited to the supply of crematoria services. If the CMA determines that services by funeral directors at the point of need should remain in scope, our view is that the additions below should be made to the Terms of Reference in Appendix F:

*Provision of funeral services pursuant to prepaid funeral plans*



We note that the 'provision of services provided pursuant to prepaid funeral plans' is listed as out of scope for any proposed MIR. We do not consider that this is appropriate and we consider that this element must be included in the scope of any proposed MIR. Whilst the sales process of pre-need services may be different to at-need, the delivery of 'pre-need' services happens in the same overall environment as 'at-need' services. Important matters regarding the actual delivery of the funeral (such as overall care of deceased, overall legislative compliance and overall front-of-house quality) are applicable to both 'at-need' and 'pre-need' services at the point a plan is redeemed.

#### *Vertical integration – Funeral directors who also operate crematoria*

We believe that an unintended consequence of the CMA's work in the funeral industry may result in those funeral directors who also operate crematoria giving preferential treatment to their own funeral clients when it comes to prices and services at crematoria.

This risk was identified in the OFT's report published on 25<sup>th</sup> May 1995 concerning the merger of Service Corporation International and Plantsbrook Group. Whilst UIs were agreed in order to protect the consumer and the market as a whole, it is our understanding that commitments to these UIs from vertically-integrated providers have now fallen away. This, combined with the fact that the market is changing and that funeral firms are having to review their business models, may drive funeral directors who are also crematoria operators to seek the opportunity to take advantage of their owner operator status.

Whilst we recognise that this represents more of a 'theory of harm' at this stage, we would want the Terms of Reference for any MIR to be explicit in ensuring that any unintended consequence in this regard was part of the scope of any investigation, in order to continue to ensure fair competition practices in respect of such vertically integrated providers.

#### *DWP payments for funerals*

It is important that the increase of funeral poverty is brought expressly into scope in any CMA market investigation. The government subsidy is an economic feature of the market which impacts competition between funeral directors. It undoubtedly affects the normal economic running of the funeral industry. Please note that statistical information in this sub-section is derived from the NAFD response to the CMA Funerals Market Study Statement of Scope, June 2018.

We note that the DWP subsidy represents less and less each year in real terms and the overall amount being paid out has been falling. The government reported in August 2017 that £38.6 million was paid out in Social Fund Funeral Expenses Payments (**FEP**) in the year to July 2017, compared to £40 million in 2015-2016 and just over £44 million in both of the previous two years.

The number of successful claims has also declined. The government figures for 2016-2017 indicate that the number of people applying for the benefit remained largely the same as the previous year at 45,000, but the number of successful applicants fell, with only 27,000 people receiving a payment in 2016-2017, compared to 29,000 in 2015-2016. This means almost 20,000 bereaved people had their application for a FEP refused. The CMA report states that 513,000 funerals were paid for by bereaved at the time of death in 2017. Therefore, 45,000 applications for DWP funding would represent a significant portion of funerals.

The industry has sought to respond to the issue of funeral poverty by the introduction of lower cost funeral options. Nevertheless, as the DWP subsidy continues to be worth less in real terms year after year, there is an increasing shortfall in funding which either is met by the customer or is borne by the funeral director. Fees that cannot be recovered from the family must be written off and the loss

incurred subsequently recouped in higher prices for other aspects of funeral provision. It is rarely possible to refuse to provide a funeral in advance as the DWP do not in practice confirm that a payment will be made until a final invoice is produced after the funeral. This necessarily impacts the funeral director business model. Therefore, the disparity between the DWP payment level and the real value of a funeral represents a fundamental feature of the sector.

#### *Scale of involvement with the independent sector*

While it does not necessarily require a specific amendment to the MIR Terms of Reference, we note that the market study review could have engaged in a more meaningful way with the multitude of smaller independent funeral directors (referred to as the long tail of small firms or independent funeral directors). In any proposed subsequent market investigation, it is important that proactive steps are taken to ensure independent funeral directors are called to provide evidence to the CMA in a comprehensive and detailed way in order to properly inform any industry-wide findings. The market study stage focussed primarily on the three largest players who together represent only 29% of the market (Co-op 16%, Dignity 11% and Funeral Partners at just under 2%). Due consideration must be given to the remaining 71% of the industry comprised of independent funeral directors.

In relation to our preferred outcome from the market study, that of increased consumer awareness and progression of a regulatory framework as opposed to an MIR, Funeral Partners would also encourage those involved in these outcomes to engage in a meaningful way with both the independent and corporate funeral sectors. This will help to ensure appropriate industry-wide recommendations and solutions are developed.

#### **Conclusion**

Funeral Partners supports the work being undertaken by the CMA. Funeral Partners would welcome any further engagement from the CMA with our teams as part of the process and we will continue to support the CMA in any way we can.

Nonetheless, Funeral Partners strongly believes that there remains a direct correlation between quality and the price paid by the consumer for funeral services. Funeral Partners remains committed to high quality standards, both 'back-of-house' and 'front-of-house', in order to encourage repeat custom and generate the best possible reputation within the communities in which we trade.

Were the CMA to proceed to an investigation, we are open to discussing remedies with the CMA and, where appropriate, 'road testing' ideas to help inform the most suitable solutions.

As set out above, we nevertheless strongly urge the CMA to reconsider in detail whether exercising its discretion to make an MIR is indeed appropriate or necessary in this sector, given the apparent need for an immediate industry-wide legislative outcome and an independent regulator. Recommendations for swift regulatory reform combined with CMA guidance (especially for consumers) would ultimately seek to address far more effectively the issues already identified by the CMA in its market study.

The burden on both the public purse and the funeral industry of pursuing an additional 18 months (or longer) of detailed CMA investigation will be considerable, and is likely to result ultimately in higher prices for consumers due to the increased costs borne by the sector during that period. We encourage the CMA to reconsider in detail whether it should exercise its discretion to make an MIR in circumstances where earlier calls for industry-wide reform combined with CMA guidance would swiftly lead to a clearer, more effective and less costly solution for all.