

CMA Board Advisory Steer

Background

1. The CMA's updated procedural guidance on market studies and market investigations (Guidance) states that, where the CMA undertakes a market study leading to a market investigation (MI), in addition to drafting the formal terms of reference for the MI, the CMA Board may append an advisory steer to the reference decision setting out its expectations regarding the scope of the MI and the issues that could be the focus of the investigation. The Inquiry Group is expected to take this into account, although it will continue, as required by the legislation, to make its statutory decisions independently of the CMA Board.^{1 2}
2. The CMA's report on the responses to its consultation on the draft Guidance notes that "the Terms of Reference restrict scope in some ways (by limiting the description of goods or services), but any advisory steer could supplement this by, for example, advising the Group to focus on certain issues."³ The CMA also indicates that the steer is "simply intended to provide additional clarity over the views (if any) of the Board on the expected scope of the MI, including issues to be addressed or issues that it considers do not require further consideration, based on the previous work undertaken."
3. Accordingly, the CMA Board's advisory steer to the Inquiry Group for the MI relating to the supply of funerals and related goods and services in the United Kingdom (the Group) is set out below.

Advisory steer

4. This advisory steer forms part of the CMA's funerals market study decision. It is separate from, but supplements, and should be read in conjunction with, the Terms of Reference.

Focus of the MI

5. Based on the evidence and analysis gathered to date, our view is that there are reasonable grounds for suspecting that the features or combination of those features described in paragraphs 8.29 to 8.36 of the funerals market study final report prevent, restrict or distort competition.

¹ [Market studies and market investigations: Supplemental guidance to the CMA's approach](#) (Paragraph 3.39, CMA3, July 2017)

² In its [Response to the consultation on guidance on market investigations](#) the CMA stated: "We believe [the steer] will help maximise the potential synergies between MSs and MIs carried out by the CMA and reduce the risk of unnecessary duplication, by allowing the Board to take more explicit account of the work undertaken in an MS in setting out its views on the appropriate scope of an MI. We therefore consider that these changes are consistent with the creation in ERRA13 of the CMA as a single competition authority, a key rationale for which was to avoid duplication and to bring about greater efficiencies in markets work, while preserving the independence of decision-making between MSs and MIs which remains central to the regime."

³ *Ibid*, para 2.71.

6. The central concern arising from the market study is that people are paying higher prices for funerals than can be justified. Underlying this is the fear that people in these challenging circumstances are not in a position to make the best choices and are vulnerable to exploitation.
7. The CMA has found evidence that for a considerable number of years the largest firms of funeral directors have implemented consistently large annual price increases, without reference to underlying cost pressures. The CMA is not persuaded by the argument it has heard that higher prices are justified by better quality of service. Profit margins achieved by the largest funeral directors have been high by international standards.
8. Cremations account for 77% of funerals in the United Kingdom. The largest operators of private crematoria have implemented price rises of between 6 and 8% every year for the past eight years (and higher in the years before that) and again, the CMA is not persuaded that industry cost pressures can fully explain such levels of price inflation. Some local authorities (which operate around two thirds of all crematoria) have also implemented large price increases, although on average, these have been lower than those implemented by private crematoria.
9. The purchase of a funeral cannot be avoided, nor delayed; many customers are extremely vulnerable at the point of purchase and as a consequence, have difficulties engaging. Therefore, a full appreciation of the circumstances under which choices are made is needed. This is true both for the assessments of any adverse effects on competition (AEC), but also for the approach taken to remedy any AEC identified.
10. The group will weigh up the evidence and reach its conclusions independently, but if it reaches a view that there are features of the markets that give rise to an AEC and that remedies are appropriate, such remedies will need to be designed in a way that results in sufficient confidence that vulnerable consumers will be protected. This is in line with the government's draft strategic steer to the CMA⁴ which states that the CMA should make markets work well for vulnerable consumers, and with the CMA's own commitment to protecting vulnerable consumers.⁵ The CMA's wider programme of work to learn more about how people's circumstances can affect their ability to engage in markets and get a fair deal has focussed on how the CMA can help vulnerable consumers. This work acknowledges that carefully thought through remedies which control outcomes may be a proportionate and effective remedy to address harm.⁶
11. Our initial view is that the scale of detriment could be very high. If this is true, we would expect a range of remedies to be assessed including those controlling outcomes.

Specific issues

⁴ [The Government's Strategic Steer to the Competition and Markets Authority \(annex A to the Consumer Green Paper\)](#). The Consumer Green paper states that "Competition should drive the best deals, but no one should be exploited if they lack the time or capacity to engage and the vulnerable should be protected).

⁵ [CMA Annual Plan 2019-20](#).

⁶ [Consumer vulnerability: challenges and potential solutions](#) (CMA, February 2019)

Services provided by funeral directors arising from the redemption of pre-paid funeral plans

12. Around 200,000 pre-paid funeral plans are sold each year, and redemptions of funeral plans currently account for around 15% of all funerals. The provision of pre-paid funerals comprises two elements: the first is the sale of plans (by pre-paid plan providers) which allow customers to pay in advance for their funeral: this is essentially a financial product, but which guarantees the future delivery of certain services, as defined by the plan, rather than a sum of money.⁷ The second element is the funeral service itself, which will be delivered by a funeral director at redemption.
13. The government, led by the Treasury, is currently reviewing the pre-paid funeral plan sector with a view to designing a more appropriate regulatory framework. The government's objectives are to ensure that all pre-paid funeral plan providers are subject to robust and enforceable conduct standards; there is enhanced oversight of providers' prudential soundness; and consumers have access to appropriate dispute resolution services if things go wrong.
14. Given the Treasury's review of pre-paid funeral plans, the CMA's consultation on whether to make a reference proposed to exclude from the scope of a reference both the provision of pre-paid funeral plans, and the provision of services by funeral directors pursuant to pre-paid plans. However, the CMA proposed to include the provision of 'top up services' (i.e. the purchase of additional services at the time of need that are not covered by the funeral plan, but which families may wish to buy when time comes to organise the funeral). The CMA received several submissions arguing that the CMA should bring within scope, the supply of pre-paid funeral plans and/or the supply of services by funeral directors pursuant to prepaid plans.
15. The provision of pre-paid funeral plans is clearly within the ambit of the Treasury's review and for this reason it was excluded from the market study and it is excluded from the Terms of Reference.⁸
16. However, submissions to the CMA's consultation on the proposed reference noted the similarities between the delivery of funeral services irrespective of whether they were purchased in advance or at the time of need. They also noted the importance of ensuring any CMA remedies targeted at improving the quality of funeral director services applied in both situations to avoid any unintended outcomes.

⁷ According to The Treasury, a funeral plan is a contract under which a customer makes one or more payments to a provider, who subsequently arranges or pays for a funeral upon the death of the customer. Providers either invest these payments in a trust fund or take out a form of insurance against the life of the customer. This enables customers to pay for a funeral in advance and safeguard against inflation.

<https://www.gov.uk/government/consultations/pre-paid-funeral-plans/pre-paid-funeral-plans-call-for-evidence>

⁸ The Government's consultation covered the marketing and sale and the financial and prudential aspects of pre-paid plans; this can be distinguished from the delivery of funeral services by a funeral director on redemption of a pre-paid funeral plan.

17. We considered it important to take steps to avoid the risk of any potential regulatory gap that might arise from expressly excluding the provision of services by funeral directors pursuant to pre-paid plans from the terms of reference. We therefore decided to extend the Terms of Reference to include the provision of services by funeral directors in connection with the redemption of a pre-paid plan. We consider that, in seeking to close this regulatory gap, it is important to ensure we do not duplicate Treasury's regulatory efforts.