

CMA Consultation Response May 2019
Consultation on the Funeral Director and Cremation Services Market Investigation. Statement.

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Introduction.

As an established independent vocational funeral provider and active participant within the regulatory process for the Funeral Profession, being a member of the Burial and Cremation Committee (Scotland), the Funeral Expenses Assistance Review Group (Scotland) and a member of the Scottish Government Short Life Working Group on the Statutory Code of Practice for the funeral sector, I have quite extensive experience over 35 years within the sector.

These opinions are entirely my own.

The difficulty this MIR will have is in trying to characterise the differing regional effects of unrestricted competition within a highly regarded service sitting outside any regulation. The levels of competition and associated effects within each region are disparate and fluctuating. Here in Scotland the urban areas are generally contested, and prices vary dramatically, yet in the rural areas with lower expected volumes, competition is present but less obvious and still prices vary. There is no doubt that this increased competition has affected prices 'advertised' but the MIR will hopefully find hard facts as to the actual prices 'charged'. The model to gauge 'vulnerability' will be extremely difficult to attain with any accuracy as the definition of vulnerability is subjective.

Consumer behaviour is notoriously difficult to gauge let alone modify, which is why the previous OFT inquires failed. The market forces of perceived trust, levels of expectation and successful firms being most able to accommodate changing consumer behaviour led to a stable platform of professionalism which served the UK well for many years.

The unrestricted entry of large quantities of (largely) untrained, unqualified styles of businesses all eager to succeed has led to this race to the bottom attitude and a stripping out of 'behind the curtain' essentials, in the name of price. The education, training and any oversight whatsoever, within the sector is shameful and until it is a statutory requirement the public trust in the profession, due to unscrupulous operators will continue to erode unabated.

I see no great need to answer the CMA questions in detail as they are ambiguous and deflective to the real issues needing address.

Observations.

From the outset the inclusion of Crematoriums as part of the same MIR as Funeral Directors is fundamentally flawed.

Why burial authorities are being sidestepped is also a mystery as Burial charges have seen the most outrageous increases in recent years with no explanation or correlation to investment or cost recovery, however as most Burial Authorities are Council operated it's not terribly difficult to follow the profits into other areas underfunded by Westminster cuts. That is a political decision made by each council individually and its ethical support likewise individual. The fact that those most in need receive the full payment for the burial or cremation fees from the DWP is some justification for this, but it leaves the rest of the community worse off.

There is currently very limited cremation competition, apart from a few localised areas. As they are already under significant regulation with regard to the cremation process and planning criteria, it could be interpreted that by including Crematoriums within the MIR, the CMA would prefer the cremation authorities to enter full funeral service provision as a competitor to the established sub-contractor relationship they currently enjoy, with the funeral firm acting as an agent who also guarantees fees for both public and privately owned Crematoriums. The funeral firm gains no advantage by acting in this way and for transparency the cremation authority should issue its own invoice directly to the applicant for settlement.

The cremation authorities as a rule have never issued a proper breakdown of costs to cremate. Itemising the actual combustion fee, cremulate to ashes, administration, maintenance of chambers, facilities, music, garden of remembrance, staffing etc.

For transparency if a client saw that a Crematorium spent or more appropriately charged a lot for the upkeep of its gardens that would have an impact upon the choice of said client who was interested in having the ashes interred there compared to a client wishing unattended cremation and ashes return. Standard Adult Cremation charged at £???? isn't helpful for fair competition and transparency. There are crematoriums who charge 100% for out of district applicants including the organists fee, which don't even relate to the actual fee the organist receives.

This current system perpetuates the false perception that even when the Crem (or burial) fees are increased hugely, with no consultation with the client gatekeepers, (i.e. those who underwrite those costs), it's assumed that it's the Funeral Firm charging those fees, which is neither transparent nor open.

This is further exacerbated by the hidden practice of larger funeral firms using their national provider status to delay payments to authorities for several months. Thus, enjoying much advantage compared to the small independent firm who will receive a 'red letter' after only a few days, whether the client has paid for the service or not.

I would assume the MIR will investigate the whole practice of the sub-contractor-provider relationship in terms of competition and abuse of monopoly. The vertical trading of corporates is also hidden in company names and offset reporting.

The access to low cost funding and glacial or regularly written off repayments from the public purse for local authority owners is also a major issue in terms of a level playing field, as going forward the effects of this will undoubtedly affect fair competition, vested interest planning consent issues and ultimately financial fair play.

Areas to Explore

The removal of barriers for low volume cremators could be of great importance, going forward.

I would ask that the MIR investigate the subsequent necessity of such additional abatement equipment and this is most definitely a barrier to entry for competition.

For relevant information showing any trends, both SEPA and the EPA should have extensive records of mercury recovered in the last 15 years.

As an example, I could install a low volume (300 PA) crematory within my existing premises for less than a new Jaguar hearse. (£150K) I would however be highly unlikely to get a SEPA licence and/or planning permission, as the mercury abatement equipment costs more than the cremator (£190K)! We currently cremate 80% of decedents with dentures only, therefore no teeth to hold mercury. This is most definitely the tail wagging the dog as modern 2 combustion chamber cremators also produce minuscule emissions compared to the systems of circa 2000 when testing was carried out, (yes, there was only 1 single day and location of testing for Mercury emissions) and the reduction in the use of mercury amalgam by dentists would further question this legal requirement..

The ethical argument of low volume cremators would be met with the family having a service within the funeral home. (Our homes have service rooms with 100 mourner capacity, most Crematoriums are less or only slightly higher) The deceased is committed in their presence then after the mourners have left, transferred within the same building for cremation. If the applicant wishes, they can witness the charging into the chamber. The consent would include a section in which the applicant agrees to the ashes being returned, which already happens in over 90% of our services at present, thus removing the need for a costly Garden of remembrance.

The vested interests in the Cremation sector will fight against that sentiment but a market should either be properly competitive or is held back by such interests. There is a historical cake and eat it mentality with services being delayed 3-5 weeks in some areas due to insufficient cremation slots, yet the cremation sector claims an oversupply? This explains my reference to vested interests as their reticence towards new, equally ethical models, operating without the need to provide a full-service Crematorium, which is historically more like a Cemetery with memorialisation and gardens of remembrance. The options nowadays for ashes are vast and scattering or interment in a dedicated place is no longer the popular choice.

If this option was open, I could provide a cremation for less, than £200, meeting the expectations and sensitivities of the bereaved both in terms of practicalities and within a more transparent fee structure. With the introduction of 250-300 similar low volume crematories operated by properly licensed Funeral Directors, the monopoly enjoyed by the established cremation authorities could be broken and a more level playing field achieved.

Competition versus Cost

The continued above inflation increases in profits from a stagnant market (there are only circa 600K deaths annually) is impossible, without price fixing or agreement on non-competitive pricing, yet the CMA asks rather ambiguously about the competition betwixt corporate and independent firms and large or small firms?

What is the definition of large or small?

What is the definition of Independent? Family Firm?

There are companies advertising, quite legally at present, as Independent, family firms, yet are corporate instruments owned by Venture Capitalist investors or other such entities, using manipulation of said names, as they are not defined properly.

Does the CMA have the faintest idea of the definition of a Funeral Director?

Does anyone know just exactly how many Funeral Directors are in operation in the UK?

These are major issues the CMA haven't publicly even mooted yet.

Over the last few years increasing unrestricted entry has demonstrably intensified competition and yet certainly evidenced the opposite to the expected-on cost, value and quality of service for the bereaved and especially the care of the deceased.

The question of lowering barriers to funeral firm entry surely is unrealistic as at present there are no legal nor regulatory barriers at all. Anyone at all, worryingly a criminal or person of questionable history can operate as a Funeral Director with no legal protection for the public. This is without doubt the most damning outcome of the present situation and the most urgent to be addressed.

Unfortunately, it also needs a potted history lesson to be genuinely understood.

Potted History

For well over 50 years the Funeral Provision sector was financially undervalued, yet stable in terms of performance and professionalism.

Undervalued? Without wasting too much time on nuances, cold hard economic realities meant, up to the 1990's most independent FDs were vocational family businesses, the desire to be ethical and serve clients well, were prioritised higher than making profits. Profit was essential for survival but the stability of the volume of services prioritised reputational word of mouth. (It was unsavoury to appear expensive)

Expansion and inward investment were tortuously slow and costly. Unless a new business hit the ground running, operational overheads caused regular failures. Nowadays an operator conducting 20-30 (or less than 2-3 a month) Funerals per annum can survive. Previously lenders charged high premiums for investment, nowadays the sector is seen as a gold investment opportunity.

The rise of venture capitalist involvement proves the rise in profitability of the sector over the last 15-20 years. Another indicator is the fact that many firms haven't increased their fees for 4-5 years proving, retrospectively, there was room with profits over the last few years especially.

Stable?

The high overheads, low profitability and high expectation of clients meant it was a risky proposition for a start-up. Many trained with larger or corporate firms for experience and becoming 'known' and trusted in their communities. Therefore, when they opened the risk was greatly reduced as that essential trust, experience and qualification were already there.

This kept the number of FDs relatively low and the cycle of start-up, growth, expansion then either stagnation or change of circumstances led to other firms buying over the business, continued.

An important factor is the demise of Professional qualifications moving from being almost mandatory, delivering a high level of service and quality, alas from the 1990's, this has dropped dramatically as the recognised qualifications became less and less relevant and ultimately without regulation, redundant.

The amount of unqualified persons, poorly trained or worse without any training at all, claiming, quite legally, to be Funeral Directors, opening unchecked, has led to many of the stories, experiences and race to the bottom in the name of competition which sickens the vocationally driven businesses, who are inevitably tarred with the brush of the profit first, sales oriented firms. The lack of set minimum standards is the greatest shame in the sector, allowing the unscrupulous and downright dangerous loose on an unsuspecting and vulnerable public. This is where unchecked open competition has led us.

Vulnerability is a major theme within the CMA MIR. However what vulnerabilities are being investigated? As previously mentioned, 'Vulnerable' is a very subjective word.

Bereaved is a catch all for those recently experiencing a loss. But not all bereaved are vulnerable. I can offer many examples where the client knows exactly what they want for the funeral and how much it will cost.

The ethical practices of a provider mean that when a truly Vulnerable client approaches, it's in our and obviously their best interests to provide them with fully transparent and honest advice as, if we 'sell' a funeral they neither want, nor afford, we only compound matters. This is abundantly clear to an independent firm as bad debt and complaints are especially counterproductive, however with a corporate set up, bonuses and targets are altogether more individually important to the arranger, than collecting monies or dealing with aggrieved clients as 'it's not their area'.

Therefore, the correlation between the ratio of complaints to services completed between independent and corporate firms should be included within the MIR. This was included, on an individual firm basis, in the Scot Government code of practice consultation as a high level of complaints to number of services carried out, indicate managerial issues and poor practices.

The turnover of staff and at what level of professional development of leaving, is also an important indicator to the 'health' of the firm. Well managed, motivated and rewarded staff don't leave to open in competition, which if investigated will undoubtedly show some very enlightening trends.

The correlation between the timing of higher and higher fees being charged to staff throughput will provide valuable information to show that ultimately the corporate entities will need to be scaled down in size or managerial control made more localised.

The MIR Panel

A funeral service in rural Scotland is a very different thing from that in London or a minority service in Birmingham. The MIR will need to expressly investigate localisation of custom and community pressure and expectation upon a funeral service. One size certainly doesn't fit all. The danger of this MIR trying to fit information into perceived pigeonholes is very real. I notice there are all 4 home nations represented but I would implore the CMA to expand the panels to include noted experts from the funeral profession with localised knowledge. This will greatly reduce the risk.

Self-regulation.

The trade associations and the OFT of yesteryear will need to shoulder a lot of this blame. After the millennial OFT inquiry, which trusted self-regulation by the trade associations, without giving any requirement for enforced trade association membership sowed the seeds of where we are today.

The trade associations, (NAFD and Saif), chased Membership 'numbers' rather than the 'quality' of member. Scottish Saif did well to raise standards and quality of Membership, having by far the highest level of criteria to apply, but far too little and far too late, although mandatory refrigeration for membership was a major coup, but one which the public already thought statutory?

The goal of the trade associations was to increase membership to sell funeral plans as that is where many assumed the future lay. Numbers over quality still to this day are prioritised even with this ongoing inquiry, shown by the lack of development and emphasis of education and membership criteria or even mandatory professional qualifications for personnel in positions of influence.

Unfortunate but simply, self-regulation is not something this sector can currently manage. Too many, in positions of influence, are hopelessly conflicted This commingling of responsibilities and fiscal survival, leads to stagnation and inertia to change, as ultimately this would affect their own 'bottom lines'.

However as the CMA have already glimpsed the Scottish Inspector of Funeral Director's proposal to Scot Government Ministers for the regulation and licensing of Funeral directors, I firmly believe and hope, that a new multi stakeholder overseen licensing and regulatory board, which will inspect, license and audit all funeral director activities from a Statutory position will be a huge leap forward. Perhaps small steps at first but with the gradual loss of the inept, unqualified and unsuitable through transparent and rationale improvement of services and facilities, we can ensure a Funeral profession which is both competitive and trusted to look after some of the most vulnerable in society.

Competition and fees.

Retrospectively it's clear that since the importation of the model of leveraged buyout, coupled with vertical integration of associated services the upward pressure on fees has increased dramatically.

In terms of competitive forces upon prices, the independent firms generally made sure they were charging less than the cooperatives. However, when the leveraged model took hold the radical increase in fees made even the cooperative appear cheap. In the noughties, no one ever wanted to be the cheapest, as that implied lower quality, therefore a follow the leader pricing increase developed.

With a few exceptions, the corporate entities charge by far the higher fees, [X] being the most notable. £5-£6K for a traditional hearse and 1limousine service. Then came the smaller corporates [X] £3.5-£4.5K. After this, the most established independent firms sit with a higher level of facilities charging around £2.5/£3.5K. This is considering that the corporates from circa 2000-2005 began to reduce the 'traditional' coffin quality from veneered to foil or 'wood effect' and a noticeable reduction in the prestige marques and age of their Funeral fleets. Which is the opposite of most established independent firms who either maintained or increased theirs. Counterintuitively the corporates, due to their volume buying power could purchase fleets at volume discounts of 15-25% and by being VAT registered meant (another 15-20%) they could pay over a third less per vehicle compared to the independent.

The newer low-cost promoting firms some of which are independent, some corporate or venture capitalist funded, and 1 which is wholly funded from the public purse, who extoll the price first ethos have introduced competition but at what cost?

I would inquire of the CMA to include the funding, ownership and price breakdown of a charity, as you yourselves haven't responded to those very questions from some 12 months ago, apart from deflecting towards the Scot Gov who in turn referred everything back to you.

Is it fair for the Public funding of a private firm to provide a service already well established with no risk to its directors? The well-intentioned motive of reinvesting profits into a charity is neither here nor there in terms of competition law. I ask this as it's now an established and government approved method how local authorities could fund and operate their own Funeral service and skew the playing field even more.

A funeral is not a computer nor an item of furniture. It's generally a very personal service with nuances of celebration, loss and even rebirth. To find a dedicated professional who can easily switch from a specific details of a minority religious service or handle, sensitively, a decedent who has a multitude of physical problems, or has passed away in an awkward locale under extreme pressure and expectation and be professional throughout, isn't an easy find nor indeed cheap. I believe there are at least 20-30 different types of Drs, Solicitors, Accountants, Bankers, and indeed government mandarins. Would the CMA ask them to affect their consumers behaviour?

I would question that the CMA need to look at the funeral sector from the more basic viewpoint of not how do we make the sector more competitive, because in general is overly competitive, but how do we ensure that sector is open, transparent, proportionate and fairly regulated, to meet the fast changing needs of the bereaved and improve the care for the deceased.

I am acutely aware that the CMA have recognised how complicated and difficult this investigation is and I congratulate them on taking up the challenge. There will be many voices, shouting many things, but like most things in life, the motives and money are huge indicators of companies' intent and show a way forward. This will be a very interesting 2 years.