

## **COMPETITION AND MARKETS AUTHORITY ISSUES STATEMENT**

### **- submission by 9<sup>th</sup> May 2019**

Response respectfully submitted by HM Inspector of Funeral Directors,  
Natalie McKail

#### Summary of Issues

(a) What customers consider to be the essential components of a funeral, what they understand to be a good quality funeral or crematorium and how they assess quality when dealing with funeral directors and crematoria.

Given my experience of working with the bereaved in the last two years, specifically in relation to matters of concern which may have been brought to my attention, it is clear to me that this is a deeply personal and unique view for each funeral arranged. In my experience there is a desire to observe personal, family, community and faith expectations or a combination of all of these aspects. There may also be competing and sometime conflicting views expressed within a family or extended network and the views, aspirations and expectations can be micro or macro scale.

There will be a desire to care appropriately for the deceased individual and loved one until the final act of care is enacted on the day of the funeral, that being a cremation or burial. In the majority of cases this responsibility is transferred to a chosen Funeral Director, with the underlying assumption that these are trained, experienced and/or qualified staff. It is also assumed, in my experience, that the premises and care facilities are 'fit for purpose', and may include refrigerated storage. In many cases the bereaved will have a particular location in mind regarding the care of their loved one, but this is not always explicitly requested. The care aspect of dialogue between a customer (the bereaved) and a service provider (the funeral director) may often be the least well explored, and given the sensitive and potentially upsetting nature in many ways is entirely understandable.

In my experience there is a desire to be able to spend some time with the lost loved one prior to the day of the chosen funeral service, this may include viewing in a designated premise such as the funeral parlour, local church, home setting or chapel of rest at the crematorium. Again the funeral director will aim to be flexible in responding to both the needs and aspirations of the family but also the care requirements of the deceased. The nature of these arrangements may include a small private gathering at one point in time, or indeed many people over a longer period depending on the extent of those wishing to pay their respects. The care of the deceased and condition of the loved one may also dictate the professional advice given to the family at the time of arranging initial and ongoing viewings, albeit it is expected in all cases this should be supported wherever possible.

There is a broad recognition that an appropriate coffin or casket is required for that final act of care, and that advice will be provided as to a range of options available suitable for the chosen funeral arrangements. In addition, there may be discussions as to how the ashes of the loved one should be collected, stored and managed and this may include the services of the funeral director to enact those wishes.

In many cases, the bereaved family will look for support to make wider arrangements with third parties such as the Minister, Celebrant, and Humanist. In addition that there will be dialogue and liaison with all other statutory agencies where necessary, for example in Scotland the NHS, Police Scotland and the Crown Office and Procurator Fiscals Service. There will also likely be an expectation of liaison with, for purposes of delivering the funeral, the relevant burial and cremation authority in order to secure appropriate service arrangements.

The bereaved may wish for the service provider to support them in selecting and booking other aspects of the funeral arrangements such as to provide flowers, orders of service and the funeral tea. It may be that the family chooses to take forward some or all of these arrangements themselves and that this can be accommodated.

Additionally the customer will likely expect that a suitable, well maintained and fit for purpose vehicle is used to transfer the deceased to the place of the funeral, and they may additionally request suitable and, well maintained and fit for purpose vehicles to transport members of the bereaved family to and from chosen locations.

The bereaved will likely expect to be supported on their personal journey to both make arrangements for the funeral itself and also in attending the funeral on the day, this can come in a variety of ways including support to understand legal requirements and completion of legally binding application forms, understating and agreeing arrangements for clothing their loved one, memorialising and celebrating their loved one at the committal through music and words, support to discuss and agree donations and management of tributes. Additionally, the staff team from the funeral director may be requested to assist in a physical sense by lifting, placing, lowering the coffin as requested.

They may also seek support to understand their rights and access routes to financial support and award. They may also wish to change their minds about arrangements as the picture becomes clearer for them as an individual or family as to their choices and wishes. These choices and any changes should be accommodated and clearly set out in terms of initial estimates and final invoicing and a clear accountability set out through the dialogue.

Finally, the family may often look to the service provider for general emotional support at a time of grief and loss, with many bereaved individuals remarking to me that they found comfort discussing their loved one with the funeral director and had confidence that they were 'doing the right thing' by them and their family. In reviewing feedbacks forms gathered by many funeral directors, this emotional aspect is repeatedly mentioned and the individual and personal experience and support provided recognised.

In my experience of this sector, the bereaved often report that it is the people they interact with from the company who make them feel as if they have had a high quality service, perhaps more than necessarily a quantifiable measure of quality in premises, vehicles etc. They do however, again in my experience, have an understandably low tolerance for things going wrong, such as inaccurate timings, impolite or untidy staff, vehicles breaking down or funeral wishes not being fulfilled.

At these times there also is an expectation of a robust and resilient complaint management response.

(b) How any quality differentials between funeral directors and between crematoria are taken into account by customers in their choice of funeral directors and/or crematoria and the extent to which investments in quality explain price differentials between suppliers?

In my experience there may be little assessment of quality differentials between funeral directors, this may be due to lack of experience, expectation or articulation of aspirations, however the main and overriding factors appear to be word of mouth reputation, proximity and geography, and increasingly competitive prices for an individually assessed 'appropriate' funeral.

In my view there are two aspects to the point being raised here which are not necessarily linked in the bereaved consumers mind. As I understand it from general dialogue with bereaved individuals, and sectoral research shows, that customers may have an expectation that quality standards for premises, care of the deceased, staff competence, etc and service and consumer standards are already in place therefore they are choosing from an already level playing field. My inspection outcomes would indicate that this is not necessarily the case. Customers may feel that they currently have limited opportunity or desire to ask about service standards at the time of arranging a funeral, therefore in my view some of the burden of that assessment should be mitigated by creating an operational landscape nationally which sets a uniform level of service standards for all businesses irrespective of location, size or structure.

(c) The extent to which the vulnerability of customers at the point of need impedes their ability to engage with the process and make informed choices at all stages in the funeral arrangement process, and what practical aspects of this process have the most significant impact on customers' ability to make informed choices.

In my experience the loss and grief experienced by the bereaved is such that they often gain comfort in making the arrangements for a family member seeing this as their final act of care for that individual. It is interesting to note at this point that the law requires acts from the bereaved at this time such as registering the death, and completing for example an application for cremation. It is therefore my view that clearly and consistently described options for a funeral can be a useful resource for the bereaved to inform themselves as to the choices they would like to make at this time. Often where a death is particularly distressing or the grief is clearly very significant, other family members or friends will support that individual to make the right choice. It is equally important that the service provider makes it clear that choices can be made over a period of time and do not need to be made straight away.

It is known from research that often the bereaved will act less like active consumers in selecting funeral service provider, or selecting options for the funeral itself, therefore to aid choice and to increase awareness of options it would be helpful to have a common set of descriptors for particular service components, but that this must be a flexible and multi-dimensional tool.

We have observed the market place shift in terms of service provision in recent years, to include more direct or linear propositions, and I would anticipate further shifts in the coming years either as a result of customer demand or indeed the sector testing new business models or technologies. Additionally, I think it important to consider elements such as service descriptors which are nuanced and faceted for example categorisation of premises standards, provision of staff who are competent to a described standard, provision of services to an accredited standard e.g. ISO etc.

In summary, in response to this point, I do think the bereaved may on occasion find it difficult to know what options are available and the parameters of their choice. What can they expect and what are the impacts of not doing something, they may not feel confident to explore this or it may feel disrespectful to do so either from a service or financial aspect.

(d) How different circumstances, including social, economic, faith-related and cultural, may have an impact on the options available to customers and on their ability to make informed choices.

This will be a deeply personal and individual matter for those bereaved individuals making arrangements for a funeral, often faith and culturally based networks will provide guidance at the time of loss as to what might be best and how to achieve the most appropriate funeral in an empowering and supportive way.

I have listened however as to how financial and economic circumstances can deeply impact on the bereaved, wider family and friends, where options are chosen from a principally cost based perspective and do not truly reflect the aspirations or wishes of the bereaved. I am also concerned that as there is not level playing field for service, premises etc standards that the bereaved in some instances may not fully understand the implications of purely cost based choices. If there is an expectation that the service standards are already in place and universally applied, there may be a view as a consumer or customer that they can confidentially choose from a price perspective assuming 'fair competition' exists in the market.

(e) The nature and extent of competition between funeral directors, including how prices and behaviours differ between small and large providers.

No comment.

(f) The funeral sales process, including how and when in the process prices are provided to customers and any other aspects of the sales process that may affect customers' ability to make the best choices.

When inspecting a variety of premises across Scotland, I have observed that where a trade body membership is in place, it is usual to see a copy of a price list displayed in either or both the reception and arranging room. This may also be the case for non-trade body businesses, but in my experience may be less common place.

I also take some time during the voluntary and pre-arranged inspection process to discuss how the funeral arrangements are made with the bereaved, to understand who leads on that dialogue from a business perspective and how the needs and aspirations of the customer or client are documented and translated into team actions and business service responses. As funeral costs are not part of my published remit, I do not do this to explore comparable or reasonable costs but to ensure that the business can demonstrate an understanding of customer expectations.

In staff teams describing the process of arranging however it is apparent that there are various methods in relation to the provision of costs, on or off line, costs being estimated either verbally or in writing and then confirmed at the end of the funeral arrangement session, or in writing thereafter, service descriptors and attributed costs being varied, discrete costs being described individually or bundled and/or package costs being presented. This may be a confusing picture for those who wish to pre-plan their funeral arrangements or indeed for those accessing services at the time of need.

As I understand it, traditionally the discussion about cost of a funeral did not take place until some time after the service had been provided. There has been much progress in encouraging much more up front transparency and clarity on costs led by the two main trade bodies, but this is still not entirely consistent across Scotland. I would support the need to continue efforts in this area and would expect that a consistent, upfront and clear description of cost and service attribution would be the norm moving forward.

(g) The profitability of both large and small funeral directors, and the extent to which cost increases and/or investments in quality improvements explain the increases in funeral prices that have been reported.

I would be keen to see detailed analysis of costs of compliance and service prices both with current regulatory expectations and modelling of possible future requirements. A percentage increase in cost will be attributable to investment and improvement with an assessment therefore of costs increases and profits.

### Potential remedies

Aims;

(a) To improve the preparedness of customers ahead of the point at which the funeral needs to be organised by encouraging people to consider funeral arrangements at times when the situation lends itself to such considerations before the point of need, and

(b) To make it easier for customers to make the best choices, for example by ensuring that the information provided by suppliers enables like-for-like comparisons of prices and services offered.

Wholehearted agreement with these aims, with the addition of a further element to encourage stakeholders to improve support for the public to become more funeral literate and confident in making choices as consumers.

#### Additional possible remedies

(a) Pricing/charging remedies. Such remedies would seek to limit the ability for funeral directors and/or crematoria operators to set prices significantly above the costs of providing their services. At this stage, recognising the challenges of implementing such remedies in a fragmented market, we consider that a number of options are open to us.

(b) Remedies to regulate the levels of service quality provided by funeral directors and crematoria operators, for example in relation to aspects of quality that customers are likely to find particularly difficult to engage with (e.g. standards of care of the deceased). Such remedies would also address any incentives to diminish product and service quality levels that could arise if prices were to be regulated.

The Burial and Cremation (Scotland) Act 2016 provides a potent platform for change, through the introduction of a regulatory environment in Scotland, based on a quality service approach. The introduction of a statutory Code of Practice for all Funeral Directors which will be inspected against by an independent party should reassure the public in Scotland that service and premises standards are appropriate for supporting the bereaved and care of the deceased and are consistent. In addition, that recourse can be sought for matters of significant concern in relation to those standards.

Scottish Ministers may consider the introduction of licensing of funeral directors, as set out in the principal Act, allowing for an additional regulatory lever to be introduced should this be deemed necessary. As with other regimes, this could introduce specific conditions of licence and licences be subject to review and revocation. Determination of these specific and noted provisions have yet to be made by Scottish Ministers and will be provided for through regulations laid before the Parliament, which in itself allows a concerted input by all relevant stakeholders. These provisions may provide useful considerations on a national level as they provide an opportunity to embed a cost/quality consumer environment for many years to come.

(c) Market opening remedies. These types of remedies are used to lower barriers to entry and could include:

(i) Requiring that funeral directors and/or crematoria operators unbundle elements of their packages of services to give customers the flexibility to source such elements from elsewhere if they wish to, e.g. the flexibility to buy the coffin from a third party supplier, and  
As I understand it many funeral directors in Scotland would already support a level of flexibility for customers to exert their own consumer choice and purchasing power in ordering key elements of a funeral service such as ordering their own coffin. I absolutely accept however that this may only occur occasionally and when a customer has made a concerted effort to express

this desire. It is not my understanding that this would be routinely offered to the bereaved. I do not have an understanding as to whether suppliers would routinely be able to offer a direct customer channel as envisaged here, this would of course merit further exploration.

(ii) Proposing reforms to the planning regime and to the way in which approval for new crematoria is given.

No comment.

It may also be necessary, depending on the package of remedies that is required to address any AECs that we find, to introduce reforms to the regulation of the sector. If we require the introduction of pricing/charging remedies and/or remedies to regulate the levels of service quality, it is likely that the effectiveness of these remedies will be enhanced by the introduction of new, or amendment to existing, regulatory regimes, potentially supplemented with a licensing scheme.

Agree that this would be necessary to provide reassurance that service standards many of which are often unobserved by the bereaved are not lessened as a result of an increasing competitive cost environment. To ensure that there is cognisance of the costs of compliance and a fair and equitable trading environment, and most importantly that the wishes of the deceased and bereaved may be discharged by competent and known service providers who can be flexible to their needs and aspirations.

#### Invitation to submit views

(a) Whether the issues we have identified should be within the scope of our investigation and whether they are correctly characterised;

I do think these should be included as described and are correctly characterised.

(b) Whether there are any particular topics or methods of evidence gathering or analysis that it is important that we should include in our approach. We are particularly keen to hear suggestions in relation to how we should assess:

(i) How any quality differentials between both funeral directors and crematoria are taken into account by customers in their choice of funeral directors and/or crematoria and the extent to which investments in quality explain price differentials between suppliers.

Qualitative research with customers who have lived experience of funeral arrangements, review available customer feedback collated by Funeral Directors. Inspection outcomes cross referenced with cost indices.

(ii) The extent to which the vulnerability of customers impedes their ability to engage with the process and make informed choices at all stages in the funeral arrangement process, and what practical aspects of the process have the most significant impact on customers' ability to make informed choices.

As noted above.

(iii) How different circumstances, including social, economic, faith-related and cultural factors, may have an impact on the choices available to customers and on their ability to make informed choices.

As noted above.

(c) Whether there are further issues we have either not identified, or which we have indicated we are not minded to focus on, but which parties consider we should examine;

None in my view.

(d) Whether the potential remedies we have identified would address the competition issues comprehensively and if so how, and whether they would be effective and proportionate; and

No comment at this stage as insufficient evidence base and understanding to respond conclusively.

(e) Whether there are other potential remedies which we have not identified that would address either the issues we have identified or other issues we should consider (detailing what those remedies might be and how they would address the potential AECs in these markets).

None in my view.

We also welcome comments and suggestions on the approaches or methodologies that the CMA could use to gather evidence and carry out analysis in relation to the issues it has identified in this document.

Examples could include;

Customer segmentation analysis

Further qualitative research with customers/bereaved

Questionnaire survey of funeral directors (representative sample cohort) – costs and service description

Review and analysis of Funeral Directors feedback questionnaires

Review of trade organisations inspection outcomes

Request for submission of Funeral Directors investment and business plans