

Funerals Market Investigation

Westerleigh Group's response to the CMA's Issues Statement

1. Introduction

1.1 The Westerleigh Group ("**Westerleigh**") welcomes the opportunity to respond to the CMA's Statement of Issues regarding its market investigation into funeral directors and crematoria services (the "**Issues Statement**"). As with Westerleigh's submissions during the CMA's market study phase, our comments in this response are focused on the aspects of the Issues Statement which relate to the supply of crematoria services.

1.2 In our response to the CMA's market study interim report ("**Interim Report**") we previously set out our position on a number of issues which we believe to be key to the CMA's consideration of the nature and extent of competition between crematoria, including the importance of, and variation in, the quality of crematoria facilities and services, as well as the role of the private sector in investing in new and improved crematoria in recent years. This document draws from, and builds upon, comments made in our response to the Interim Report where relevant. We also provide our initial views on the range of potential remedial options set out in the Issues Statement.

1.3 In summary, we believe that important areas of focus for the CMA's in-depth investigation should include:

1.3.1 **The need for continued investment in the crematoria sector:** At the outset of its market investigation we believe it is important for the CMA to ensure that it has a full understanding of the existing state of provision of crematoria services in the UK. As recognised in the CMA's final market study report ("**Final Report**"), the vast majority of crematoria are owned and operated by local authorities. However, most of these facilities were built several decades ago and in many cases they are no longer fit-for-purpose to meet families' needs and expectations. As a result, there is a need for significant, sustained, investment in the crematoria sector. In recent years, this investment has primarily been coming from private sector operators such as Westerleigh, which has opened over 20 new crematoria since 2000. This investment has increased provision and delivered higher quality facilities, thereby enabling greater consumer choice and alleviating capacity issues at existing crematoria. However, further investment in high quality facilities is required given the state of local authority provision and expected continued increases in demand for cremation services in coming years. We firmly believe that this market context should form a central consideration for the CMA as it undertakes its investigation and considers the scope for potential remedies in the crematoria sector.

- 1.3.2 **The importance of quality to competition between crematoria:** We were disappointed by the findings in the Final Report that quality is not important to customer decision-making. We do not believe that those findings were supported by an adequate evidence base and, as a result, this should be a key focus of the CMA's in-depth investigation. The provision of high quality facilities and customer service is central to Westerleigh's business model and our experience is that the higher quality of our offering has increasingly led consumers to choose to hold funerals at our crematoria in preference to closer and/or lower-priced alternatives. We therefore encourage the CMA to undertake further consumer research to better understand how quality differentials are taken into account in customer decision-making and to explore more fully the extent to which crematoria (in particular higher quality facilities such as those developed by Westerleigh) attract customers from outside their immediate catchment area.
- 1.3.3 **Assessing pricing evidence alongside other factors:** Related to the above points, it will be important for the CMA to ensure that its consideration of crematoria fees is not limited to a simple consideration of pricing differentials between different crematoria and over time, but takes adequate account of other relevant factors. This includes, in particular, quality differentials between the private sector and local authority facilities, the increasing demand experienced by operators such as Westerleigh as a result of its higher quality, and the investment being undertaken by the private sector in developing new and improved facilities to the benefit of consumers.
- 1.4 Finally, Westerleigh believes that the CMA should focus its investigation where there are clear and substantiated market failures and remedy these proportionately without risking much needed investment in the sector. To the extent that the CMA finds concerns regarding the ability of customers to exercise choice between crematoria, we believe that this can best be addressed by a demand-side remedy aimed at ensuring customers are provided with greater information. Indeed, Westerleigh would welcome greater transparency in the sector, provided that the information provided to customers captures qualitative elements as well as pricing so that consumers can make a properly informed choice.
2. **Westerleigh's crematoria business**
- 2.1 As set out in our response to the Interim Report, Westerleigh is the leading developer and independent operator of crematoria in the UK. Westerleigh offers a high quality service at purpose-built facilities and prides itself on providing the best possible care for the bereaved. Our business is founded upon giving heartfelt care to those suffering bereavement, delivering cremation services to the highest standards, serving the local community and offering genuine consumer choice.

2.2 Westerleigh now has 33 sites and cares for more than 40,000 funerals per annum, with more than 1.5 million mourners attending services at our sites every year.¹ 21 of Westerleigh's crematoria have been opened since 2000, with a further site due to open later this year. In addition, during this period, Westerleigh has taken over the running of two sites previously operated by local authorities², improving the facilities to the benefit of the local communities. We continually invest in maintaining and improving the quality of our facilities, settings and services, as well as expanding existing sites to meet increasing demand.

3. **Market context – crematoria services**

3.1 We broadly agree with the CMA's proposed approach to the investigation and the characteristics of the sector which it expects to take into account.³ In particular, we welcome the CMA's recognition of two important aspects of the relevant market context in relation to crematoria, which we discuss further below:

3.1.1 The vast majority of crematoria continue to be owned and operated by local authorities, which in general offer a far lower quality of service than those operated by the private sector.

3.1.2 Recent investment in new crematoria has primarily come from the private sector, which has coincided with a shift in consumer demand away from burials and towards cremations.

3.2 It is in this context that the sector is seeing increasing demand for higher quality cremation services, including greater service flexibility and personalisation, shorter waiting times, longer service length options, and avoiding mixing with other funeral parties. However, as set out below, significant sustained investment in the sector is required, both public and private, given the state of the existing local authority provision and continued growth in demand for cremations, and high quality cremation services, anticipated in coming years.

a) Local authority crematoria

3.3 As set out in the Final Report, despite a recent expansion in private sector capacity (see further below), approximately 70% of crematoria services continue to be held at local authority facilities. To understand the market characteristics in the crematorium sector it is therefore essential to appreciate the nature of this existing provision, as well as the variation in quality

¹ Based on an estimated average of 40 mourners per service.

² Pardon Wood Cemetery and Crematorium and Torbay Cemetery and Crematorium.

³ Issues Statement, paragraphs 52-57.

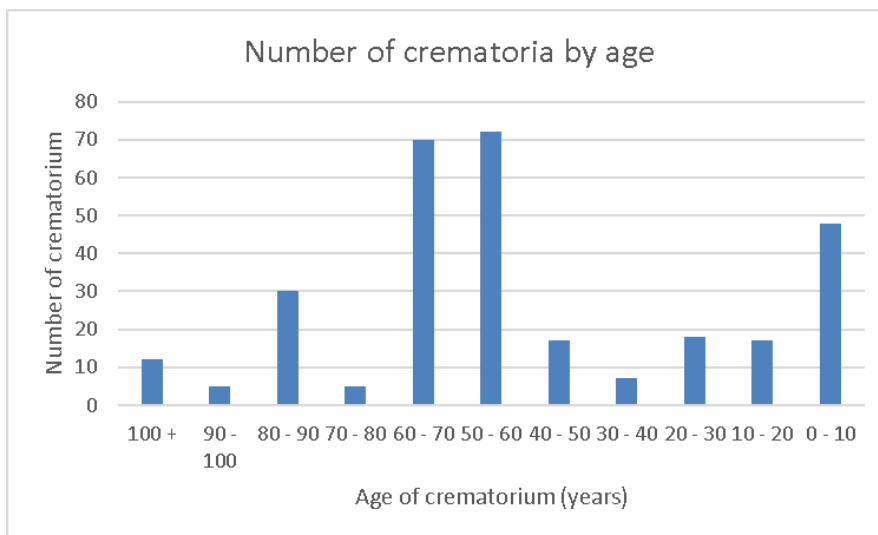
between local authority facilities and the newer facilities which have been developed (in the main) by private operators.

3.4 Changing consumer needs and the rise of new provision from the private sector mean that there are now increased expectations in relation to the quality of crematoria services, which many local authority facilities are not well placed to meet. As shown in Figure 1 below, many of the existing crematoria have been in operation for a number of decades and, in our view, are often no longer fit-for-purpose. For example:

3.4.1 The median age of local authority crematoria is c.60 years, with over 60% (194) of all crematoria opened more than 50 years ago. It is inevitable that many of these crematoria will be not fit-for-purpose today. There have been significant changes in standards of crematoria built over this time period, and as a result there is significant contrast between these facilities and new, purpose-built, crematoria and the relative experience they offer to the bereaved

3.4.2 56 crematoria were built prior to 1940. Of these 50 are still in use, with just 6 having been re-provided (or closed). These 50 crematoria, most of which are in excess of 80 years old, still represent over 16% of UK crematoria and accounted for over 85,000 cremations in 2017 (18% of all cremations in the UK).

Figure 1 – Number of UK crematoria by age



Source: Cremation Society of Great Britain – Directory of Crematoria– 2018; Westerleigh analysis; Note, 2019 data is up to 26 February 2019.

3.5 As it commences its in-depth investigation, we believe it is important for the CMA to recognise and reflect upon the fact that no other key service provision is being delivered through such an aged estate. While other municipal and healthcare facilities – such as schools, leisure centres and hospitals – have been re-provided in recent decades, the bereavement service

offered by local authorities has remained largely static despite significant changes in the needs and expectations of the bereaved.

- 3.6 Local authorities have in general been slow to respond to changes in the sector, despite the age of their facilities. This may be partly due to tightening budgets and other priorities, but also the fact that the service is revenue generating, and the revenues and surpluses have been used (in at least some cases) to meet other obligations within bereavement services generally (e.g. the care of closed cemeteries), as well as the increasing costs of ageing facilities. The consequence of this is to further increase the quality differential between the crematoria developed by the private sector and increasingly outdated local authority sites.
- 3.7 In recent years a small number of councils have recognised that their current provision is not fit for purpose and needs to be re-provided. Two recent examples are provided below. These are, however, the exception rather than the rule. It is therefore essential that new crematoria continue to be developed in order to provide appropriate, purpose built, facilities which meet the needs of families today.

Cheltenham

In March 2019 Cheltenham Borough Council opened a new crematorium, built as a replacement for the previous crematorium which was developed over 80 years ago in 1938 and had effectively become obsolete having suffered significant disruption during 2018, being described by the Council itself as "increasingly unreliable".⁴

The new crematorium has two large chapels and will hold services in larger and more modern buildings, provide parking for 100 cars, and will offer a significant improvement on the previous facility in terms of quality and the service delivered to families, at a level comparable with facilities offered by the private sector. Cheltenham Borough Council has recognised in their communications that their previous provision "*no longer considered to be fit for purpose*" for modern needs and that the new service will offer a "*vastly improved service for local people*", noting in particular the "*new car park and dedicated comfortable waiting rooms, to the new chapels and floral tribute areas*" and that "*services will now be more personal, with new technology offering music, readings and video to complement the life that a person has led.*"⁵

Fees at the crematorium have increased significantly to £869 in 2019, up from £645 in 2017. This 35% increase in price is likely to reflect both the additional investment to develop the new facility (around £8.5m) as well as the improved offering.

⁴ BBC News, "*Cheltenham Crematorium set to stop taking new bookings*", 11 October 2018.

⁵ GloucestershireLive, "*Everything you need to know about Cheltenham's new £8.5m crematorium*", 22 March 2018; "*First look inside Cheltenham's 'wonderful' new £8.5million crematorium*", 27 February 2019.

Plymouth

Plymouth City Council has recently announced plans to invest £12m in a state-of-the-art crematorium to replace two crematoria built in 1936 and 1967, which it has stated are "*reaching the end of their useful life*". In developing its proposal Plymouth City Council visited Westerleigh Crematorium near Bristol to see the quality of our facilities and, similar to our site, its plans include two chapels, café and hospitality facilities for wakes.

The Council has highlighted that the crematorium will be "*designed to meet 21st Century expectations of the bereaved*" in order to deliver a "*modern, fit-for-purpose facility*" which is "*accessible in line with modern requirements, sensitive and flexible to meet the differing needs of [its] customers, their traditions and preferences*".⁶

Plymouth County Council has acknowledged that its existing sites, Plymouth Efford and Plymouth Weston Mill, are not fit-for-purpose. Notably, however, its standard fees are currently £925 for a 45 minute service⁷, which is higher than the fee at many of Westerleigh's modern facilities.

b) Private sector investment

- 3.8 The importance of private sector investment in the crematoria sector was emphasised in our response to the Interim Report and, we believe, should form a central part of the CMA's consideration of both (a) whether recent price increases in the crematoria sector can be considered to be indicative of an adverse effect on competition ("**AEC**"), and (b) should the CMA ultimately identify one or more AEC(s), the most appropriate remedial action to address those AEC(s) (including the potential effect of any remedial action the CMA may propose to take on the significant customer benefits being delivered by this continued investment in new and improved facilities).
- 3.9 As set out in the Final Report (see Figure 2 below), following a wave of construction in the 1950s and 1960s there was little investment in new crematoria facilities until private sector investment emerged from the 1980s onwards, in particular in the past decade. Between 2010 and 2019, 48 new crematoria have been developed, almost all of which were developed by private sector operators.⁸ A number of further openings are expected in 2019 with a significant pipeline of sites in the planning process. This is the highest level of development since the 1970s and is well ahead of the additional capacity which would be required purely based on numbers of cremations. As a result, the total number of crematoria has increased by almost 50% since 1980. As noted above, Westerleigh itself has opened a large proportion

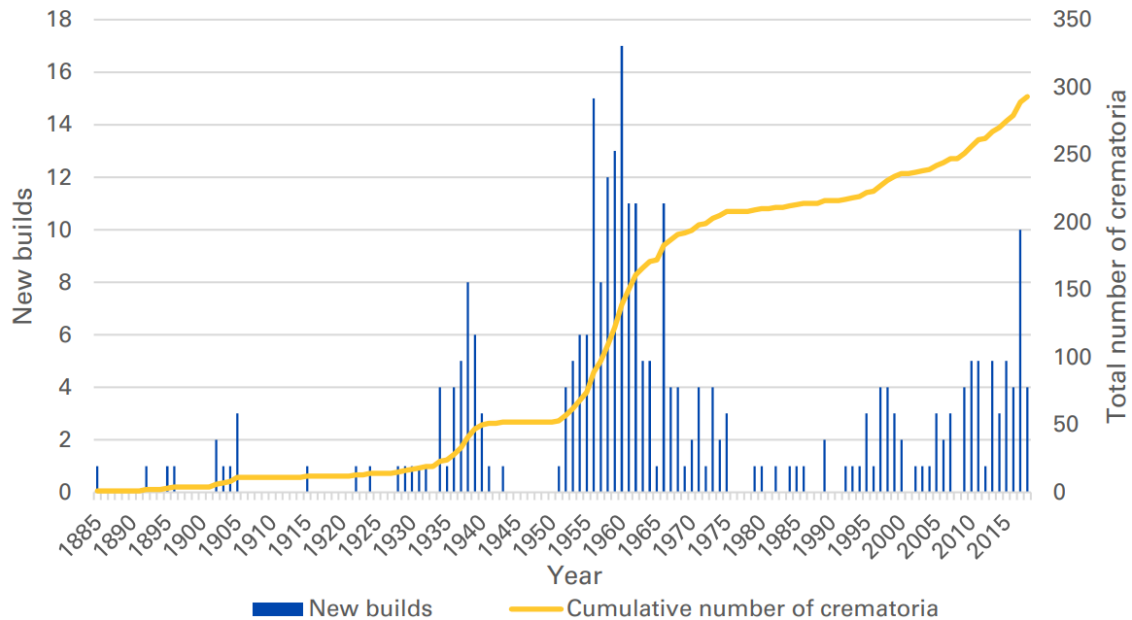
⁶ PlymouthLive, "*Plymouth to get new £12m crematorium next to Saltram Park*", 23 July 2018; <https://www.plymouth.gov.uk/birthsmarriagesanddeaths/futurebereavmentservice/ourvision>.

⁷ Based on data from the Cremation Society. See *Cremation Statistics*.

⁸ 43 out of 48.

of these new crematoria, investing over [£] in capital expenditure in the 10 years to 2018 alone.

Figure 2 – Number of crematoria in operation in the UK over time



Source: CMA analysis of ICCM information. 10 new crematoria directly replacing old crematoria not counted as new builds.

- 3.10 The development of new facilities by Westerleigh and other private providers demonstrates that the barriers to entry emphasised in the CMA's Final Report are surmountable. This investment has increased provision, enabled greater consumer choice, delivered higher quality facilities and alleviated capacity issues at existing crematoria. Had these facilities not been opened, families would not have had the choice of new, purpose-built, facilities and would have had to travel longer distances and faced longer waiting times for booking a service at older, and in many cases stretched, local authority crematoria.
- 3.11 The increased availability of crematoria has also facilitated a continued shift away from burials (which remain considerably more expensive) to cremation. While the development of new crematoria is therefore reflective of changes in consumer behaviour, it is also quite possible that it has, in part, caused the increase in the cremation rate as these new facilities have created provision which was not previously available. Approximately 30,000 more cremations were carried out in 2017 in Great Britain compared with 2000.⁹ It is highly unlikely that this increase in demand would have been able to be serviced without the opening of new crematoria. Indeed, Westerleigh has played a large part in meeting the additional demand, with [£] more cremations being serviced at Westerleigh sites in 2017 as compared to 2000.

⁹ Cremation Society of Great Britain - Directory of Crematoria, 2018 Edition.

3.12 Given the developments set out above, customers' choice of crematoria has steadily been improving in recent years, the provision of crematoria is more aligned with the needs of the public, and capacity issues have been alleviated (to an extent) at busy sites. As set out in Figure 3 below, the ten busiest crematoria in 2006 have all seen significant decreases in cremation numbers between 2006 and 2017. These ten crematoria accounted for 34,855 cremations in 2006, 8.4% of the UK total. By contrast, in 2017 they accounted for 29,248 cremations, 6.3% of the UK total. This represents a 16% reduction in cremation numbers despite total cremations increasing by 12% over this period.

Figure 3 – Cremations serviced at ten busiest crematoria in 2006

CREMATORIUM	NUMBER OF CREMATIONS		
	2006	2017	Δ %
Portchester	3,993	3,334	-17%
Eltham	3,949	3,680	-7%
Middlesborough	3,727	3,118	-16%
South Essex	3,600	3,211	-11%
Southampton	3,394	2,296	-32%
Leicester	3,382	2,119	-37%
Ruislip	3,363	3,062	-9%
Crawley (Surrey & Sussex)	3,161	3,065	-3%
Exeter	3,153	2,376	-25%
Glasgow (Daldowie)	3,133	2,987	-5%
Total	34,855	29,248	-16%
<i>% of UK total</i>	<i>8.4%</i>	<i>6.3%</i>	
Total cremations - UK	416,880	467,748	12%

Source: 2006 - Cremation Society of GB - Directory of Crematoria; 2017 - Pharos Statistics issue, Summer 2018

3.13 Private sector investment has also driven innovation in the sector, with Westerleigh, as one of the few developers of new facilities of scale, having a history of responding to the needs of local communities and funeral directors. For example, Westerleigh invested in the first Pooja ceremonial room in a UK crematorium for the purposes of the local Hindu community at our site in Great Glen, and also invested in hospitality facilities at two sites in response to changing customer requirements.

c) Need for continued investment in coming years

3.14 As the CMA will be aware, in spite of the opening of new crematoria in recent years, there is a significant need for further investment in the sector. A Review of Crematoria Provision and Facilities undertaken by DCLG in 2016 ("**DCLG Review**") highlighted very significant capacity issues in the sector, including the distance customers have to travel to their nearest

crematorium, the size and capacity of crematoria, the length of cremation services offered, the accommodation and amenities required including car parking, as well as staffing.¹⁰ These were particularly acute problems for customers of particular faith groups. Westerleigh is confident that its facilities do not raise any of these issues and the concerns raised were primarily driven by local authority providers.

3.15 Moreover, the CMA's investigation comes at a time when investment in building new crematoria is fundamental to ensuring that there continues to be sufficient capacity to serve growing demand. This growth in demand is driven by two trends:

3.15.1 The continuing trend towards consumers choosing cremation over burial: as noted in the Final Report the proportion of funerals involving a cremation has increased from 35% to 77% since 1960.¹¹ Westerleigh expects this trend to continue over the next twenty years given, among others, the increasing quality of crematoria (driven by private sector investment) and the significantly lower costs of cremations as compared to burials.

3.15.2 The expected growth in deaths in coming years: while the mortality rate has generally been in decline in recent decades until 2016, Public Health England has predicted that with an increasing and ageing population there could be a 10% increase in the number of deaths by 2023¹²; by 2040, it has been estimated that this will rise to around a 25% increase from 2014 levels.¹³

3.16 The DCLG Review identified a need for significant and continued investment in the sector. While ideally this would include investment from local authorities in upgrading and replacing their facilities alongside private sector investment in maintaining their current crematoria and adding new facilities, given the current state of local government finances this appears unlikely to happen, at least in the short term. Continued investment from the private sector is, therefore, crucial to deliver the capacity and quality improvements required to meet demand for cremations in coming years.

3.17 As a result, we firmly believe that facilitating and encouraging continued investment in high quality service provision that meets customer needs should be given due consideration by the CMA as it undertakes its investigation. In particular, we would encourage the CMA to ensure that incentives to invest in the sector are maintained or improved. The worse-case scenario

¹⁰ Department for Communities and Local Government, "*Review of Crematoria Provision and Facilities, Discussion Paper*", 16 March 2016; See also Ministry of Housing, Communities and Local Government, "*Crematoria Provision and Facilities, Government Response to the Review*", 8 April 2019.

¹¹ Final Report, paragraph 2.9.

¹² Public Health England, Health profile for England: 2018, published 11 September 2018.

¹³ BMC Medicine – see <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-017-0860-2>.

for the sector would be for intervention to have unintended or unforeseen consequences that risk this much needed investment.

4. Quality

- 4.1 The CMA's Final Report concludes that "*a very small number of customers choose a crematorium based on quality*" and that "*incentives to compete over quality to attract customers may be limited*".¹⁴ This is not, however, consistent with Westerleigh's experience. Over many years of operations, and based on customer and funeral director feedback, it is very clear that the quality of crematoria facilities and services is an important factor in customer decision-making and consequently competition between crematoria.
- 4.2 The provision of high quality facilities and customer service is central to Westerleigh's business model and meeting the needs of the bereaved is a key part of our crematoria offering. As set out above, this focus on quality has led to significant increases in the funerals which Westerleigh cares for over time. Westerleigh has consistently high customer satisfaction scores from its customer feedback (99% in 2018¹⁵), with narrative comments invariably highlighting the quality of Westerleigh's service including, in particular, the quality of the crematorium, setting and the attentiveness of our staff.¹⁶
- 4.3 The evidence base used by the CMA to inform its findings on quality in the Final Report was extremely limited, and not of a sufficient standard to draw any conclusions, let alone conclude that there is no competition on quality. Importantly, if there were no competition on quality, there would be no incentive to increase or maintain high levels of quality, particularly where customers purchase cremation services so infrequently. In such circumstances, one would expect *under-provision* of higher quality services. As the CMA has recognised, however, this is not the case: there is "*limited evidence that a lack of competition between crematoria has resulted in lower quality in terms of [crematoria] facilities offered*".¹⁷
- 4.4 We therefore believe that quality should be a key focus of the CMA's Phase 2 investigation and we intend to provide the CMA with further evidence to assist it in understanding how crematoria compete over quality. For the purposes of this response we highlight two areas which we believe to be of particular importance:

¹⁴ Final Report, paragraphs 5.30 and 5.57.

¹⁵ Calculated as the percentage of respondents rating the service as excellent or good.

¹⁶ Westerleigh also has regular dialogue with the funeral directors using its sites to identify areas where the service can be improved and to address any concerns raised by the bereaved. These discussions highlight that customers and funeral directors value our service and quality, and that Westerleigh is responsive to feedback in this area.

¹⁷ Final Report, paragraph 6.85.

4.4.1 The need for further consumer research for the CMA to better understand how quality influences customer choice.

4.4.2 Westerleigh's experience is that its crematoria often attract customers from areas which are located closer to other crematoria, in circumstances where the neighbouring crematoria have lower prices (see below). This suggests that consumers are actively choosing Westerleigh's sites on the basis of quality and are prepared to pay a higher price to receive better quality service.

a) Scope of Phase 2 analysis

4.5 In our response to the Interim Report, we highlighted our concerns that the CMA's assessment of quality-related factors was overly reliant on a limited consumer survey, which were not adequately addressed in the CMA's Final Report. This survey is inadequate to continue to be used by the CMA to inform its conclusions in the market investigation. We therefore welcome the fact that the CMA intends to focus as part of its in-depth investigation on building a greater evidence base to assess what customers consider to be a "good quality" crematorium, and how quality differentials are taken into account in customer decision-making.¹⁸

4.6 We look forward to engaging with the CMA further on these issues during the course of the market investigation. We believe that it will be important for the CMA to ensure that its analysis captures a range of different factors, some of which the CMA should aim to capture in a systematic way (given its ability to collect this information and the time available during a phase 2 investigation), and some of which will be qualitative and therefore cannot be readily measured in a quantitative way. For this reason, we consider further consumer research will be required in order to ensure that the CMA fully understands those aspects which are of most importance to consumers.

4.7 The CMA's phase 1 survey did not capture the importance of quality as a parameter of competition and, in any event, involved too small a sample for any meaningful conclusions to be drawn. The CMA's research at phase 2 should focus on better understanding quality, including the importance to customers of factors such as the quality and comfort of the building, a peaceful setting, well maintained grounds, appropriate car parking, booking waiting times, service length and flexibility, opportunities to personalise the service, attentiveness of crematoria staff, audiovisual facilities, opening hours and privacy. The dynamics of the market – for example, limited advertising and direct marketing – means that building a reputation, generating 'word of mouth' business and obtaining a return on investment in quality is a long-term process while other aspects of quality can be ascertained immediately by a customer (waiting times, service lengths).

¹⁸ Issues Statement, paragraph 33.

4.8 It will also be important for the CMA to ensure that it fully appreciates the difference in quality between private crematoria and typical local authority crematoria. As set out below, Westerleigh's experience is that this quality differential is leading consumers to exercise choice to travel further in order to access modern, fit-for-purpose facilities when arranging a funeral.

4.9 We note, however, that in the Issues Statement the CMA states that it does:

"not expect that it will be possible to establish a clear relationship between quality differentials and price differentials, as there are many dimensions of quality, some of which appear to be difficult to measure reliably (e.g. helpfulness of staff, empathy etc) and others which are unobservable to customers".¹⁹

4.10 While we agree that many relevant quality-related factors cannot be easily measured or compared, we are concerned that the CMA proposes to *"address this issue primarily through our analysis of profitability"*.²⁰ In particular, we do not believe that a focus on a pure profitability analysis will give the CMA a sufficient basis on which to conclude whether the market is operating in the interests of customers.

4.11 As noted above, a notable finding of the market study was that there is limited evidence that a lack of competition between crematoria has resulted in lower quality crematoria services.²¹ The CMA should not lose sight of this fact simply because an analysis of qualitative factors is difficult. Indeed, this is an important indicator that competition between crematoria is driving continued investment in quality (at least amongst private operators) to the benefit of consumers, which is consistent with Westerleigh's experience of the market.

b) Competition on quality and the importance of attracting customers from outside a crematorium's immediate catchment area

4.12 We welcome the CMA's intention to investigate further the extent to which people are prepared to/do travel further to a crematorium because of a perceived quality differential.²² In doing so, it will be especially important to ensure that the CMA's analysis captures a representative sample, and in particular that it captures the effect that the development of

¹⁹ Issues Statement, paragraph 64.

²⁰ Issues Statement, paragraph 64.

²¹ Final Report, paragraph 6.85.

²² Issues Statement, paragraph 76.

higher quality private crematoria, such as Westerleigh's, has had on customers' willingness and propensity to travel.

- 4.13 The Final Report concluded that: the "*vast majority of customers do not compare the services of different crematoria*", that there is a "*strong customer preference to choose the closer crematorium*" and "*the number of customers for which crematoria may "genuinely" compete...is likely to be limited.*"²³ However, the evidence base for these conclusions is extremely weak.
- 4.14 Directly contradicting this conclusion, Westerleigh has already provided customer maps to the CMA showing that its catchment areas typically extend far into the catchment areas of competing crematoria. A significant proportion of customers travel longer distances to receive better quality service at our crematoria. As noted in our response to the Interim Report, Westerleigh's sites are drawing significant numbers of customers from the edges of, and outside, their catchment areas.
- 4.15 Supporting this further, Westerleigh has analysed the catchment area around each of its sites within which 80% of 'customers' are located.²⁴ The average catchment area across Westerleigh's sites is [X]. Almost [X] of Westerleigh customers are located within [X] of a competing crematorium while almost [X] are located within [X] of a competing crematorium. This is consistent across Westerleigh's sites. At the vast majority [X] have another crematorium located within [X], while [X].²⁵
- 4.16 Furthermore, for [X] of Westerleigh customers another crematorium was closer than the Westerleigh crematorium they chose (i.e. the customer chose not to select its closest crematorium but instead chose to travel further to Westerleigh's site). Of these, [X] travelled further despite the closer crematorium (or crematoria) being cheaper than the Westerleigh crematorium. The evidence shows that customers are travelling further for higher quality.
- 4.17 The increase in the numbers of cremations at many of Westerleigh's sites also demonstrates the importance of quality and that families are choosing Westerleigh's offering over the alternatives. Specific examples of this across the Westerleigh portfolio include:
- 4.17.1 **Westerleigh's recently opened North Wiltshire Crematorium.** This crematorium serves North Wiltshire and the town of Swindon. Despite only being open for a short period of time (since October 2018), significant numbers of families are choosing

²³ Final Report, paragraphs 5.21 and 5.36.

²⁴ Based on the postcode of the deceased.

²⁵ At a significant number of sites, virtually all customers have another crematorium within [X], while [X] Westerleigh customers are located within [X] of a competing crematorium.

Westerleigh's crematorium over the existing local authority crematorium in Swindon. Since opening, [X] of cremations at the North Wiltshire Crematorium (highlighted as Royal Wootton Bassett in Figure 4 below) relate to postcodes within areas which are closer to the neighbouring Kingsdown Crematorium operated by Swindon Borough Council.

Figure 4

[X]

- 4.18 **Westerleigh Crematorium near Bristol.** This crematorium first opened in 1992 and despite having been opened for over 26 years, the number of cremations serviced continues to increase year on year, with recent investments (including a second chapel and hospitality facilities in 2016) helping to improve the quality of the offering and driving customer choice. The increasing number of cremations, and consequential growth in Westerleigh Crematorium's local market share²⁶, is shown in Figure 5 below.

Figure 5

[X]

- 4.19 This 'qualitative pull' is key to the profitability of many of Westerleigh's sites and to our overall business model. Westerleigh competes for business both within and outside its catchment areas. We estimate that around [X] of cremations serviced at Westerleigh sites in 2018 related to postcodes outside the catchment area of the site in question, with some sites having more than [X] of cremations relating to postcodes outside of their catchment area.²⁷

5. Choice of crematoria

- 5.1 The CMA responded to Westerleigh's submissions regarding quality by noting in its Final Report that quality is "*only relevant to the extent customers have a choice of crematoria*".²⁸

²⁶ Calculated as the number of cremations undertaken by Westerleigh Crematorium as a proportion of the four crematoria in the region.

²⁷ Catchment areas here refer to the catchments used by Westerleigh during its normal course of business and reflect an area around each crematorium encompassing all locations for which that is the closest crematorium.

²⁸ Final Report, paragraph 5.30(a).

Based on its very limited survey, the CMA concluded that most customers do not have a genuine choice, supporting this with analysis of the proportion of UK crematoria located close to alternative crematoria.

- 5.2 For Westerleigh, this does not reflect reality. [redacted] Westerleigh's crematoria have at least one competing crematorium located within a 60 minute drive time²⁹, while [redacted] have at least one competing crematorium within 30 minutes. The average distance to the next competitor is only [redacted]. The single exception [redacted]. While [redacted] may be subject to less competition due to its more isolated location, volumes in more isolated or rural communities can only support a single crematorium and the presence of a private sector operator significantly increases the choice of options available to local residents.³⁰
- 5.3 In addition, [redacted] Westerleigh's crematoria have a *second* competitor within a 60 minute drive time and [redacted] have a second competitor within a 30 minute drive time.

Figure 6

[redacted]

- 5.4 Given the average catchment area of a Westerleigh crematorium (even in the presence of competing crematoria in close proximity) alongside the significant cost and importance of the purchase to families, the statement that "*the number of customers for which crematoria may genuinely compete...is likely to be limited*"³¹ is not supported by the evidence as it relates to Westerleigh.
- 5.5 For almost all of Westerleigh's crematoria, customers do have a choice and are willing to travel to obtain the better quality service offered. As noted above, the volume of cremations from outside and at the edges of Westerleigh's catchment areas and between crematoria are important to Westerleigh's business model and competition for this business is integral to the viability of Westerleigh's sites. This makes it especially important for the CMA not to draw general conclusions across the entire sector based on evidence that may only be applicable to local authority crematoria or other private sector operators.

²⁹ Standard drive times have been used (based on ArcGIS default drive-times) rather than cortege time as customer decisions relating to location will primarily be based on proximity for friends and family of the deceased.

³⁰ In each case above, customers' drive times will typically be lower, as they will be located between crematoria.

³¹ Final Report, paragraph 5.36.

6. Pricing and profitability

6.1 The Issues Statement sets out the CMA's intention to explore further the drivers behind recent price increases in the provision of crematoria, the price differentials between different suppliers, as well as the profitability of local authority and private crematoria. We look forward to engaging with the CMA in this respect during the information gathering phase of the market investigation and would welcome access to the analysis of pricing that the CMA undertook as part of its market study.³²

6.2 At this stage we note the following points which we would encourage the CMA to reflect on as it undertakes its analysis in this area:

6.2.1 As with quality considerations, given the fragmentation of the crematoria sector, it will be important for the CMA to ensure that its information gathering captures a truly representative sample to ensure that any conclusions that it draws from that analysis are sufficiently robust. In the Issues Statement the CMA states that it intends to conduct its profitability analysis for each "large supplier" and a sample of smaller suppliers, including both private operators and local authorities.³³ However, as local authorities continue to account for a significant majority of crematoria services in the UK (see above), any analysis needs to be sufficiently comprehensive and capture a large number of local authorities.

6.2.2 In our response to the Interim Report we highlighted our concern that the CMA's preliminary analysis had failed to take sufficient account of the role of the private sector in investing in delivering new crematoria, increased capacity and greater choice for consumers in the same period. We therefore welcome the fact that the CMA intends to focus more closely on the relationship between investment and fees as part of its in-depth investigation.³⁴ The CMA's assessment of this issue should take account of the scale of the investments, the long-term nature of those investments, and the significant associated risks. These risks include (among others) a very significant lead time for the investment, partly reflecting a lengthy and costly planning permission process, the process of building recognition and a reputation in a given area, as well as the risks of competing alongside public sector providers (see below).

6.2.3 We also believe that it is important for the CMA not to consider pricing on a standalone basis. Rather, as recognised in the Issues Statement's discussion of potential remedies, any assessment of pricing must be considered alongside the

³² Including, for example, Annex C and Annex E.

³³ Issues Statement, paragraph 61.

³⁴ Issues Statement, paragraph 96.

quality of services offered. As set out in our response to the Interim Report, we believe that if crematoria fees are adjusted for quality, to ensure a more like-for-like comparison, it is much less clear that private operators such as Westerleigh can be considered more expensive. The average Westerleigh fee per minute is £16.76, 12% lower than the average local authority fee per minute at £18.98, even before other relative qualitative factors are taken into account.³⁵

6.2.4 Furthermore, the CMA must recognise that the considerations which are relevant to local authority crematoria are different to those pertaining to private crematoria. For example:

- (a) As set out above, in most cases, local authority facilities were built many years ago and therefore the quality differential between local authority crematoria and private sector crematoria will become greater over time, which will affect demand and consequently pricing. Moreover, local authorities do not have the same need to generate a return on capital investments.
- (b) The CMA must also take account of the fact that local authorities have different financial priorities and objectives to private sector operators. The prices and investment decisions of local authorities therefore cannot be expected to reflect competition in the same manner expected of private operators. As noted above, this is a significant source of uncertainty for private sector operators that compete with local authority crematoria and creates significant commercial and investment risks.
- (c) The Final Report placed emphasis on the higher cremation fees charged by private operators, noting, for example, that Dignity operates 19 of the 20 most expensive crematoria.³⁶ As set out above, Westerleigh's prices are not necessarily higher when qualitative factors are taken into account. In any event, it is unclear why the CMA considers the fact that a private sector provider is more expensive than public sector providers is indicative of concerns. Quite the opposite, where private sector providers compete with public sector providers this is what one would expect and is seen across a wide range of sectors (for example, dentists, leisure facilities, etc.). The private sector providers typically differentiate themselves by providing a higher quality (and higher priced) offer. Rather than being indicative of

³⁵ Based on 2018 prices. Westerleigh's response to the Interim Report, paragraph 24.

³⁶ Final Report, paragraph 6.63. The CMA also undertook an analysis of Dignity cremation fees and booking slot length, and Dignity facilities and fees, to draw conclusions about the relationship between prices and quality. See Final Report, Annex E, paragraph 12.

concerns, we believe that the CMA should welcome the additional choice and higher quality provided by private sector providers.

6.2.5 Conclusions drawn by the CMA about competition between private sector and local authority crematoria based purely on price differences between new and incumbent providers, or whether incumbent providers have responded to new entry by cutting prices³⁷, are therefore liable to be misplaced and we hope the CMA is able to better understand how public and private sector operators compete during the course of its Phase 2 investigation.

6.3 While Westerleigh has not been able to undertake a detailed retrospective examination of its local price setting over the last five years, it is important to note that 14 of its sites have involved very recent investment, only opening within the last five years. In these areas Westerleigh is still at a stage where it is building its recognition and reputation in the local area, assessing local conditions, and its fees reflect the comparative quality of its offering. At the other sites, demand for Westerleigh services has increased substantially in recent years while demand at sites located nearby including local authority sites has in many cases fallen.

7. Remedies

7.1 In this section we provide some initial observations on the remedial options set out in the Issues Statement as regards the crematoria sector. As a general point, we note that the discussion of these issues in the Issues Statement does not distinguish between funeral director services and crematoria services. However, there are a number of significant differences between the two sectors which the CMA must bear in mind as it progresses its work in this area, as they are likely to point in different directions in terms of the remedial options which may be appropriate in each case. This includes:

7.1.1 The issues identified by the CMA in the Issues Statement differ between the two sectors. In particular, the CMA has only identified "firm behaviours" (including sales practices, reluctance to publish/disclose clear prices, and ability to control consumers' decision-making process) as an issue in relation to the provision of funeral director services. By contrast, in relation to crematoria services, the main issues identified relate to market structure and barriers to entry, alongside some transparency issues which arise primarily from the operation of the related funeral directors' market. This will clearly be relevant in determining the appropriate nature and extent of any remedies.

7.1.2 The crematoria sector represents a relatively small part of the overall funerals market under consideration, with the CMA having noted that the crematoria sector is of

³⁷ Final Report, Appendix C, paragraph 1.21.

'moderate' size. The CMA estimates total cremation revenues to be around £340 million, compared to approximately £1.3 billion for funeral director services.³⁸ Moreover, the crematoria sector is highly fragmented and largely comprised of local authorities and small private operators, with only four private companies operating more than one crematorium³⁹ (which together account for less than a third of all crematoria). Consideration should therefore be given to the effect which the burden of significant additional regulation and/or costs of any remedies will have on the sector.

7.1.3 The provision of crematoria services is significantly more capital intensive than funeral services, both in terms of the initial investment required to develop a new site and ongoing costs of maintenance and upgrading existing sites, and there are associated risks with such investment. Consideration should therefore be given to the impact which any remedies would have on operators' continued incentives to invest in the crematoria sector (see further below).

7.2 As set out below, Westerleigh would welcome the introduction of transparency obligations in relation to the crematoria sector and believes there may be scope for carefully designed "market-opening" remedies. However, we have significant concerns regarding the potential impact of the other remedial options set out by the CMA, including on operators' continued incentives to invest and the quality of services offered to customers. We also believe it is important that the CMA clarifies as soon as possible the basis on which it considers that it will be able to impose remedies directly on local authority operated crematoria.

a) Any remedies should not deter private sector investment

7.3 Should the CMA ultimately identify one or more AECs in relation to the crematoria sector, Westerleigh believes it will be crucial for the CMA to ensure that any remedial action it proposes does not result in unintended consequences and/or risk harming consumers' interest in the medium to long term.

7.4 As set out above, continued investment from the private sector will be crucial to deliver the capacity required to meet the expected growth in demand for cremations. Had investment from the private sector not been forthcoming in recent years, the existing stock of ageing and over capacity crematoria would be struggling to cope with increased demand. Absent a significant shift in Government policy there is no reason to believe that a material number of new local authority operated facilities will be delivered for the foreseeable future.

7.5 We therefore encourage the CMA to recognise the positive impact that the private sector has delivered in recent years – by increasing provision, quality and choice – in considering

³⁸ Final Report, paragraphs 8.47 and 8.58.

³⁹ Excluding trusts, co-operatives and other not for profit organisations.

potential remedies. A central consideration in the design of any remedies package should be to ensure that the remedies proposed do not restrict investment in the development of new crematoria by the private sector, which would result in lower quality, choice and innovation than would otherwise be the case.

b) The CMA's powers to impose remedies in relation to local authority crematoria

- 7.6 In our response to the Interim Report, we highlighted our concern at the CMA's contemplation of the possibility of imposing remedies, including price regulation, in relation to private crematoria only.⁴⁰ We noted that this would give rise to significant risks of a distortion of competition in local areas, as well other complex legal questions.
- 7.7 We therefore welcome the clear indication in the Final Report that any remedies would be applied to local authorities as well as private operators.⁴¹ We do not consider there is any objective basis on which remedies could be limited to the private sector, in particular given that the concerns highlighted in the Final Report are not limited to the private sector (or a subset thereof) and, as set out above, it is the private sector which has been driving investment in new capacity and higher quality facilities to the benefit of consumers.
- 7.8 We note, however, that the CMA has not responded to the points made in our response regarding the limitations on the CMA's powers as regards local authorities, beyond the simple assertion that the CMA's order-making powers "*provide a clear legal basis*" for imposing price regulation for all crematoria.⁴² In particular, we noted that the CMA's powers under the Enterprise Act 2002 to remedy any adverse features of the market, in so far as they relate to local authority crematoria, are limited to making recommendations to Government. This also appeared to have been the position adopted by the CMA in the Interim Report (i.e. given that it specifically restricted the potential scope of application of any price regulation to private crematoria).
- 7.9 We would therefore welcome clarity from the CMA as to the basis on which it believes that its order-making powers apply to local authorities, taking into account the principle of Crown immunity. This is an important issue which will inevitably have a significant bearing on the CMA's thinking on potential remedies, as well as stakeholders' submissions in this regard, and should therefore be made clear for all affected parties as soon as possible.

⁴⁰ Interim Report, paragraph 8.77; Westerleigh's response to the Interim Report, section 3.4.

⁴¹ Final Report, paragraphs 8.76 and 8.89.

⁴² Final Report, paragraph 8.87.

c) Transparency remedies

- 7.10 Westerleigh would welcome any proposals to ensure that potential customers have access to sufficient information to enable them to make an informed choice of crematorium.
- 7.11 Westerleigh already provides easily accessible information on its crematorium facilities and full price lists on each website of its crematoria. Hard copy information is made available to funeral directors for sharing with families and information is also available for visitors to Westerleigh's sites. Westerleigh welcomes the public to visit its sites at any time to view the facilities ahead of making a booking, and believes that a site visit is important for potential customers to understand the facilities being offered and the differences in quality that may not be immediately apparent.
- 7.12 Westerleigh would also welcome further comparison tools. However, it is important that any comparison highlights the quality of provision. The provision of cremation services is not homogenous and, given the qualitative elements discussed above, Westerleigh recognises that a reliable comparative assessment of quality may be more difficult to achieve. In assessing and measuring quality for comparison, care would also need to be taken to ensure that the costs of assessing quality do not outweigh the potential benefits to consumers.
- 7.13 As set out in our response to the Interim Report, it is also important that the CMA takes account of the potential for transparency remedies imposed in relation to the funeral director services market to address its concerns regarding the crematoria market. In particular, given that in most cases the funeral directors hold the direct relationships with consumers and represent the point at which those consumers exercise a choice between competing crematoria, the CMA could consider the scope for remedies requiring funeral directors to (for example) provide fuller information to customers on the range of crematoria options available and the associated costs.

d) Price/charging remedies and quality regulation

- 7.14 As noted above and in our response to the Interim Report, we believe that the introduction of price regulation in the crematoria sector would give rise to significant unintended consequences. As with any other industry, private sector development requires a return on capital sufficient to stimulate the investment in the new facility. Any cost-based price regulation would therefore risk a reduction in the quality of service offered and the quality of crematoria facilities, as well as stifling investment in new facilities.⁴³ Given these risks, and

⁴³ Westerleigh's response to the Interim Report, section 3.4.1.

the need for continued investment in the sector, we believe the CMA should be particularly cautious in considering the scope for price regulation of crematoria services.

- 7.15 In the Issues Statement, the CMA notes that "*pricing remedies are common in regulated markets, most often being applied to monopoly providers of homogenous goods or providers with market power*".⁴⁴ However, the provision of crematorium services is not a homogenous good. As set out above, there are significant differences in the quality of provision. We therefore believe that, if pricing remedies are contemplated, the design of those remedies should take account of these quality differentials and that any remedy is appropriately "quality adjusted". We are also concerned that any price regulation could lead to a "race to the bottom" in relation to quality.
- 7.16 We therefore welcome the CMA's acknowledgement that any assessment of a price control remedy would need to take account of its impact on the incentives of suppliers to lower quality and its intention to consider the scope for quality regulation as part of any package of remedies.⁴⁵ This is, however, a complicated area which will require careful consideration of the various aspects of quality highlighted in this response.
- 7.17 We also agree with the CMA that it would not be appropriate to seek to establish a "minimum quality standard". Given the current state of provision, there would be a significant risk that any such "minimum standard" would be skewed by the lower quality offerings in older (typically local authority) crematoria and as a result be set too low. This would give an advantage to lower quality sites, hamper the improvement of standards, and not recognise the incremental investment required to provide better quality facilities and service.

e) Market opening remedies

- 7.18 Westerleigh would welcome the opportunity to manage other local authority crematoria. Westerleigh already has a track record of taking over the operations of local authority crematoria. These arrangements have provided investment which has improved the facilities, quality and standards, whilst at the same time paying a rent for local authorities to re-invest in other local services.
- 7.19 Westerleigh would also welcome, in principle, any proposals which facilitate the development of new crematoria. However, we would note that (as set out above), the private sector is already investing in and opening new sites within the existing regulatory framework and there is not, therefore, a clear need for changes in this area. In considering the scope for changes to planning frameworks it will also be important for the CMA to take account of the nature of crematorium development and the considerations which lie behind the current planning restrictions, including addressing the concerns of local communities to ensure that there is a

⁴⁴ Issues Statement, paragraph 125.

⁴⁵ Issues Statement, paragraph 131-132.

robust planning process in place and that new crematoria development is permitted only where there is a demonstrable local need.

- 7.20 We note that the Government has recently indicated, in its response to the DCLG Review, that it intends to consult on revised planning guidance which could allow smaller sites to be developed.⁴⁶ We echo the comment in the report that "*[d]evelopers, will however, need to be sure of the economic viability of a site*" and note that this is likely to be the key concern when considering the development of a crematorium on a smaller site.⁴⁷

8. Conclusion

- 8.1 This response sets out Westerleigh's main observations on the CMA's Issues Statement and key aspects of the market which we believe the CMA should focus on as it progresses its investigation. Westerleigh looks forward to engaging further with the CMA on these issues and other aspects of the market investigation over the coming months.

⁴⁶ Ministry of Housing, Communities and Local Government, "*Crematoria Provision and Facilities, Government Response to the Review*", 8 April 2019, paragraph 24.

⁴⁷ *Ibid*, paragraph 23.