

FUNERALS MARKET INVESTIGATION

Summary of hearing with Memoria Limited held on Thursday, 18 July 2019

Introduction

1. Memoria said it was keen to work with the CMA to ensure that any intervention, if deemed necessary, was effective, proportionate and supported existing competition and future private investment in the sector.
2. Memoria said that the funerals sector had benefitted from significant change over the last five years, driven by the market and emanating from both the private and public sector. Memoria said that it had three key points: the first was that private funding had been central to crematoria investment over the last ten years and remained necessary for ongoing investment in crematoria and that the loss of private funding would adversely impact on capacity, quality of service and facilities. The second point was that rivals, including local authority crematoria, imposed price constraints on Memoria although they operated at different price and quality levels. The third point was that the role of consumer choice was changing the traditional approaches to funerals.
3. Memoria said that there was a continual and ongoing need for private funding in crematoria. This was because of the increased cremation rate which had been steadily rising over the last 10 years. Memoria said that local authority numbers had remained relatively static over this period. In addition, consumers now expected the higher quality of service and facilities that state of the art crematoria could provide. Memoria said that crematoria investment was both risky and capital intensive. It was difficult to obtain private funding for crematoria, because of the risks.
4. Memoria said that in addition to land acquisition, planning consent and the other costs of development, the change in consumer preferences over time, affecting for example, length of time slot, also played an important role when planning capacity. Memoria said that in addition to land acquisition and construction costs, it must also account for costs arising from potential new challenges, the cost of public consultations, appeals and public inquiries.

5. Memoria said its investment decisions required careful assessment of local demand and planning constraints with constant consideration of how its services could improve the experience of families in that target area. Decisions on the viability of new projects were also informed by local competition and pricing constraints from private and public operators.
6. Memoria said that while there were some examples of crematoria redevelopment by local authorities, these were the exception and that without private funding to build new crematoria, it would not be able to expand into new areas or maintain and improve quality and service at existing crematoria. Therefore, competition would be reduced, and consumers would be significantly harmed.
7. Memoria said that the extent of competition between local authority and private providers had been significantly understated by the CMA to date and that it competed with all alternative crematoria at all of its sites, both private providers and local authority providers, including those that had different service levels, slot lengths, site quality and/or price levels. Memoria stated that its crematoria were not local monopolies, that they had to take account of rival pricing and service offerings by local authorities as well as privately-owned rivals. Further, customers switch in response to changes in relative price and quality offerings, noting an example where its pricing policy had failed as a result of local competition and where, despite its higher quality service offer, it had to reduce its prices.
8. Memoria said that it needed continually to improve its facilities and quality of service in response to feedback from customers and funeral directors as well as increased competition from rivals, both new private entrant crematoria and existing publicly-owned crematoria who had made significant investments, in terms of renovations and refurbishments. All rivals were increasingly offering longer slot times and cheaper prices per slot outside peak times. Memoria said it was the first in the industry to roll out extended time slots across all of its facilities in 2015, noting that about 50 competing facilities across the UK now offered the same extended time slots, including some local authorities.
9. Memoria said that it had had to adapt to changing consumer preferences in the 14 years that it had been running crematoria. As well as increased demand for longer service slots and more personalised services, including live video links, visual tributes and personalised music, there had been a significant uptake in direct attended and unattended cremations as certain groups of people increasingly opted for something far simpler at a lower cost.
10. Memoria also said that many families did want an attended service, but at a lower cost than when typically arranged through a funeral director. To meet

this demand, it launched its own low-cost funeral in 2016. This meant that consumers could arrange an attended service funeral at either a Memoria crematorium or an alternative crematorium, at a cost, including collection of the body and delivery of the remains, of £1,850. Memoria noted this was much lower than the £4,300 average funeral cost reported by the CMA.

11. Memoria said that a significant amount of choice already existed for consumers. Further, not every consumer had the same vulnerabilities or, indeed, preferences. For example, there had been a significant increase in the number of prearranged funerals, as people were increasingly choosing to take control of their funeral planning before their death, in order to reflect personal preferences. Memoria said that a 'one-size fits all' approach was not appropriate to ensure the requisite levels of consumer choice and said that customers were willing to pay to get the quality and service that were right for them.
12. Memoria said that around 65 per cent of its prepaid funeral plan sales consisted of direct cremations, which were at the lowest end of its pricing. Memoria said that this highlighted that consumers were able to make carefully planned funeral decisions and were choosing more affordable options.
13. In summary, Memoria concluded that, in view of the current market dynamics, there was no need for intervention in relation to cremation services. It did not believe that price regulation would be effective or proportionate and could instead create inequality in the competitive relationship between private operators and local authorities, resulting in less choice and worse outcomes for consumers.

Quality

14. Memoria said that quality was an important element of competition and one where rivals did respond to one another, providing some examples of how competition incentivised improvements in quality and choice by Memoria's competitors and by Memoria itself. These included refurbishments to bring crematoria more up-to-date, as well as cases where rivals had lengthened slots after Memoria's entry and/or introduced cheaper early morning slots.
15. The CMA referred to Memoria's argument that there was increasing consumer demand for better quality and asked whether the starting point for assessing quality was the slot length. Memoria said it was the slot length, the facilities and the crematorium environment. The main issue was 'what does the family want'? This tied into the flexibility and quality of the crematorium provider. Memoria said that it increasingly provided double service slots for only an extra £150.

16. The CMA asked about the cost to Memoria of providing longer time slots. Memoria said it depended on the time of the day, noting that the highest demand was between 11.00am and 3.00pm. There was also a cost because if someone takes another slot out: by just charging £150, Memoria would lose the fee from another full service
17. The CMA asked whether consumers were offered a choice on crematoria. Memoria said that every single funeral director it worked with did not just offer a Memoria crematorium, but generally offered at least two other crematoria. The CMA asked whether it marketed itself just to funeral directors. Memoria said that it marketed itself directly to both funeral directors and the public. It wanted the public to tell the funeral director that they wanted to use a Memoria crematorium. Memoria said it did this through its website and said that people were increasingly using price comparison sites. Memoria said that it placed a lot of emphasis on online advertising.
18. Memoria said that when it first moved into an area, people would not necessarily know about Memoria and there was likely to be a family history of using the existing crematorium, meaning that people were likely to return there, without even thinking about it, unless they had had a bad experience in which case they might be keen to go to another place. Memoria noted that it took time to build market share following entry.
19. The CMA asked how Memoria made people consider its longer time slots if customer choice was driven by previous experience. Memoria said this was done through its marketing and by ensuring people had a positive experience when they attended a cremation at one of its facilities. Memoria said that, if a funeral overran, it fined the funeral director £300 and passed that money on to the bereaved family whose slot had been interrupted. Memoria said that due to its longer slots it rarely happened that a funeral overran.

Investment

20. Memoria said that the majority of its schemes, since 2009, had been built through EIS property-backed investment. This was because it would be difficult to arrange normal routes of private investment or private funding given the level of margin and capital-intensive nature of the investment. EIS incentivised the funder and the shareholder by providing some capital gains tax relief, effectively subsidising the investment. The Government removed any property-backed EIS investments in November 2017. Memoria has since started looking at other investment sources but said that increasing build costs together with the threat of CMA price regulation had made it a more difficult investment environment.

21. The CMA asked Memoria to explain why it considered it to be a risky business to invest in. Memoria explained that it was highly risky on two levels. Firstly because there was a ceiling on the potential business because of the distance factor (i.e. the limitation of how far someone would be willing to travel to get to their nearest crematorium meant that when you draw a catchment area you must be able to compete with the local competition), and this made it difficult to expand out of the crematorium's catchment area and put a ceiling on the potential number of cremations, and meant pricing had to be keen in order to win and retain particularly customers travelling longer distances. Secondly, because of competition, either from private new entry or existing local authority, Memoria said that, despite its quality, it would unquestionably lose some market share to a new entrant crematorium. Further, if local pricing levels were low, despite quality differences, Memoria would be limited in its ability to charge for the quality provided. Memoria said that if it were to lose even 20 per cent of the volume projected at the time of its investment, then it would struggle to remain viable.
22. The CMA asked about the planning regime. Memoria noted that the planning regime had allowed more crematoria to be built in the last ten years than in the previous forty years. Memoria noted that, while it had faced challenges with the planning regime, it had overcome those challenges where it had been right to do so. Memoria said that if there were no barriers to entry, then there would be a risk of crematoria going out of business. Memoria said that, while it was not aware of any crematoria going out of business in the UK, it would nevertheless be problematic if this happened because a crematorium represented a focal point for the local community and a site that families wanted to return to and visit remains of loved ones and memorials. It was not, therefore, desirable to see them enter and then exit again.
23. Memoria said that it was not claiming that there was a case for protecting crematoria against competition. However, the planning regime properly took into consideration whether a new build facility would benefit a community, rather than result in the building of facilities that were not actually needed. Memoria said that relaxing the planning regime requirements would make the conditions for investment poorer and reduce new entry, because securing a return on investment would be riskier.
24. The CMA asked what additional costs had to be incurred to be a higher quality provider. Memoria said that costs would be incurred because of: the development of the facility itself; the car parking provision; the size of the chapel; the state-of-the-art cremator with mercury abatement; visual tribute potential; webcasting potential; well fitted-out soft furnishing; well landscaped gardens and cleanliness. Memoria also referred to the level of service provided by its staff, their attention to detail and ongoing commitment to the

families who return to visit the crematoria. Memoria said that its audio and visual offering was currently the highest in the market. It also said it was looking into the possibility of extending slot time lengths further.

25. Memoria said that the competition was following its example. As a result of extra capacity coming into the market, crematoria were now able to offer customers longer time slots. The market was consequently moving away from a high-volume/ low quality offering to a more personalised/ higher quality offering.
26. The CMA asked whether, given the cost of land and planning issues, Memoria had ever considered buying an already operational crematorium and/or considered the option of selling one of its own. Memoria said that the barriers to acquiring crematoria were 'quite high' because you would have to pay a premium for an existing, successful crematorium. Memoria commented that acquisitions in the funeral sector had driven up the price of funeral directors' services significantly in the last 20 years because of the premia that people had paid in order to get into the market. CMA asked whether Memoria thought that the market value for the assets was quite a lot higher than the cost of obtaining or replacing a crematorium. Memoria agreed that this was currently the case, and added that market value was certainly higher than obtaining a new one. Memoria also felt that the cost of replacing one could vary and potentially be higher depending on the build / land situation (particularly in crematoria located in cities and centre of settlements).
27. Memoria said that it had previously been approached by local authorities wishing to sell their crematorium facilities and that it had entered the tender processes. However, none of them had actually ended up selling their crematorium. Memoria considered this was because the crematorium was a profitable area which helped subsidise other areas of local authority activity. In addition, Memoria noted that it would be very challenging to meet TUPE regulations in respect of existing staff while improving the site and offering to a level consistent with the broader Memoria offering.

Competition

28. The CMA asked how often Memoria would assess its competitors' position on pricing. Memoria said that it did so 'continuously' but said that its competitors mostly changed their prices just once a year. Memoria said it often changed its prices more frequently in response to competitive conditions and changes in the market.
29. The CMA asked why it seemed that Memoria had been pricing at the bottom end of the private cremation providers in terms of average prices up until

2014, but that its prices had since then appeared to move towards the upper quartile. Memoria said that this was because in 2011 to 2014, it only had one crematorium operating and that was in a very low-priced area. From 2014 onwards, the number of crematoria it was operating had steadily increased. Some of those crematoria were in areas where the prevailing price for the area was higher which would have driven up Memoria's average price. Memoria said that every individual Memoria site was priced against its local competition.

30. The CMA asked about price transparency, specifically for funeral directors. Memoria said that there was 'definitely a case for more funeral director price transparency'. Memoria said that all its prices were available on its website, along with information on 'how to arrange a funeral, how much it costs, what you have to do, who you have to speak to'.
31. The CMA asked Memoria how funeral directors could provide more information about cremations and the different crematoria that were available. Memoria said all funeral directors would hold marketing information for all local crematoria in their arrangement rooms. Memoria also said that consumers were also using online portals for funerals to find information, noting the growth of price comparison websites in the period since the Work and Pensions Select Committee report into bereavement benefits published in 2016 (the 2016 Select Committee Report).
32. The CMA asked how else funeral directors were incentivised to recommend Memoria, and in particular whether this was done through volume discounts or other pricing incentives. Memoria said it was through the relationship built with funeral directors over time and the level of combined service provided to bereaved families. [3<].
33. Memoria said that funeral firms are incentivised to come to Memoria over other crematorium operators because going to a high-quality site reflected better on the funeral director than if they went to a lower quality site. This brought reputational benefits and repeat business.
34. The CMA asked what information on quality should be provided to the customer to enable them to compare providers and make more informed decisions about their choice of providers. Memoria said: 'a full table of services and provisions, from service length to individual aspects of extras that can be added, with the prices of those specific extras, what is included in the price, what can be added'.
35. Memoria said that, while all its customers had the choice of going to another crematorium, it expected to be able to win business from those people who

were closest to their crematoria. The CMA asked whether Memoria's prices should perhaps be lower in areas where the proportion of its "core" customers (ie those geographically closer to the Memoria crematorium than to rivals) was smaller. Memoria said it could not afford to lose any percentage of its market share and that it had to win 100 per cent of all of its customers.

36. The CMA asked about a specific local example where Memoria had to reduce its price in a particular locality and how that had occurred. Memoria said that it had identified that its bookings were much lower than expected. This had prompted it to invite feedback from funeral directors who told Memoria that its prime-time slot price made the Memoria crematorium, despite its better-quality facilities, less competitive against the local authority crematorium. This had led it to reduce the price of its prime-time slots to their previous level. Memoria said that rather than continue to provide poor quality services at a lower price, it had seen a lot of local authorities respond to a new private entrant by improving their offering and increasing their prices.
37. The CMA asked about Memoria's memorial business. Memoria said that memorial sales were an important element of its business. Memoria said it took 'a very soft approach' to memorial sales. Memoria considered that, while sales were good, they did not account for as high a proportion of sales as Dignity or Westerleigh. Memoria said that it was looking at ways of expanding its memorial offering.

Capacity utilisation

38. Memoria said that when it thought about the optimum capacity usage of its facilities, it wanted to maximise the use of non-core slots and/or less popular slots and have a competitive price for direct cremation. Memoria said that the increase in direct cremations had improved capacity utilisation, because it was conducting more cremations as a result. Memoria said that around 65 per cent of its prepaid funeral plan sales consisted of direct cremations, which were at the lowest end of the pricing. Memoria also said that from a profitability perspective, direct cremations were a lot cheaper than standard cremations and it had to try to maximise its standard cremation business where it could do so.
39. Memoria estimated that it was operating technically at between 30 and 50 per cent in terms of its overall cremator capacity usage and that this was optimal for its business. It said that in order to increase its capacity usage beyond this level, it would need to employ more people and incur more costs.
40. Memoria explained further that a direct cremation, while not involving a funeral director, did not necessarily mean that there would be no service. A

direct attended cremation provided access to the entire menu list of services that the Memoria crematorium offered. Therefore, a direct cremation was not necessarily a 'cheap and cheerful' alternative. Although a funeral director was not used by the customer, Memoria would nevertheless use the services of a local funeral director to pick up the body, take the deceased into their care, put them into a basic wooden coffin and then bring the coffin to the crematorium. Memoria said it had funeral director agents that marketed Memoria's direct cremation offer within its catchment areas. It also marketed directly to the public via its own website and some online price comparison websites.

41. CMA asked whether there was any relationship between capacity utilisation and Memoria's pricing policy. Memoria said it had more flexibility with its unattended direct cremation price. As the service was unattended, customers were more focused on price. Memoria noted that while it was doing well from accessing more market share through direct cremation, the people it was providing the service to might previously have taken a standard cremation. Memoria said this could mean, in the fullness of time, that its margin and overall revenue declined.
42. Memoria said that investment and innovation was apparent and that this meant that there was much greater consumer choice. As an example, Memoria noted that direct cremation was a relatively new development in the market. Memoria also said that there had been a step change in the market since the 2016 Select Committee Report with some people wanting more personalised funerals and others wanting a simple, unattended cremation. Memoria said that the number of direct cremations it carried over was around 10 per cent. While the growth in direct cremation improved capacity utilisation of its off-peak time slots, 90 per cent of its customers still needed a peak time slot.
43. CMA queried whether there was a need for additional investment and additional capacity if Memoria could use existing capacity in different ways. Memoria agreed that capacity requirements would be reduced by an increase in demand for unattended rather than attended cremations, which could more easily use off-peak capacity or capacity in other locations, but also pointed out that this still only constituted a small proportion of overall demand. Memoria confirmed that it charged different prices for attended versus unattended direct cremations, and different prices for a 09.00 slot, 10.00 slot and for 11.00 to 16.00 time slots) but that more capacity was needed in general across the UK.

Remedies

44. Memoria said it would be 'very comfortable' if it had to make changes because of the introduction of a licensing and inspection regime. However, it said that given that it was striving for a very high level of standards throughout its sites and had its own internal mechanisms of testing those things on a random, regular basis, it would probably be very much in line with what it was already doing.
45. Memoria said that it did not have any views on who might be the best body to regulate a quality regime. [§K].
46. Memoria thought that the planning process was fit for purpose, subject to some reform in relation to planning applications for new crematoria on green belt land. Memoria considered that, where significant benefit to that local area could be demonstrated, that it should be possible to get planning consent.
47. Asked about potential price regulation remedies, Memoria re-stated its concerns that if prices were too low, crematoria might be forced to exit the market and that this could not be allowed to happen because crematoria were not normal businesses. This was because: they had no resale value; the asset could not be moved; and people still needed to go back to visit the remains of loved ones and memorials.
48. In respect of prices possibly being too high, Memoria noted that price was an important signalling mechanism to bring in innovation, new investment and new sites into a market. Memoria commented that if the CMA decided to regulate prices, it would need to be careful to make sure that it did not adversely impact these benefits that allowed choice and variety to exist. Memoria said that there were other ways to make sure that consumers could obtain good value for money without disadvantaging consumers who wanted additional services or quality and were happy to pay for them.
49. Memoria said that any remedy the CMA might impose had to be a comprehensive solution to the adverse effect on competition (AEC) and proportionate. In addition, the CMA had to consider the potentially negative effects of any remedy, which in its view included the impact on incentives to invest and to innovate, and any impact on relevant customer benefits (RCBs). In this context, Memoria argued that RCBs included 'high quality, greater choice, greater innovation' of services and goods.
50. Memoria said, to the extent the CMA could make a recommendation to government to ensure that local authorities limited prices at local authority owned crematoria, that it believed that there was a risk of a potential

imbalance between local authority and private crematoria. This was because price regulation 'would apply strictly to the private sector, and possibly less strictly to the public sector'. Memoria described relying on the cost recovery obligations for local authorities to justify price regulation for the private sector as "dangerous", and that this price regulation would also have a "devastating impact" on external investment and ability of crematoria operators to raise funding.