

# Funerals market investigation

## Quality regulation remedies

**30 January 2020**

This is one of a series of consultative working papers which will be published during the course of the investigation. This paper should be read alongside the [Issues Statement](#) published on 8 April 2019 and other working papers published.

These papers do not form the inquiry group's provisional decision report. The group is carrying forward its information-gathering and analysis work and will proceed to prepare its provisional decision report, which is currently scheduled for publication in April/May 2020, taking into consideration responses to the consultation on the Issues Statement and responses to the working papers as well as other submissions made to us.

Parties wishing to comment on this paper should send their comments to [Funerals@cma.gov.uk](mailto:Funerals@cma.gov.uk) by 27 February 2020.

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The Competition and Markets Authority has excluded from this published version of the working paper information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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## Introduction

1. Our initial assessment of the quality of services provided by funeral directors to customers suggests that:
  - (a) During the purchase process and delivery of the funeral, customers can observe a range of quality aspects but care of the deceased, which is of considerable importance to customers, is largely unobservable, and customers vary rarely compare quality across providers;
  - (b) together, this is likely to weaken the incentive for funeral directors to offer high quality in relation to those services that customers cannot easily observe and assess (ie back of house standards);
  - (c) whilst funeral directors may monitor and invest in the quality of some of their services, we have not seen strong evidence of back of house quality responding to customer preferences, or that good quality provision requires high costs and prices; and
  - (d) in relation to back of house quality standards, the evidence available suggests that many funeral directors provide an acceptable standard. However, there is a widespread view in the industry that some funeral directors do not.<sup>1</sup>
2. The purpose of this working paper is to outline our emerging thinking on possible remedies to regulate the quality of service in the funerals sector, as well as the key design and implementation considerations, in the event that we find any adverse effects on competition (AEC(s)) in relation to funeral director services. Our emerging thinking on remedies is without prejudice to the final outcome of our assessment on whether there are any AECs in relation to the services provided by funeral directors and any detrimental effects on customers resulting from those AECs.
3. The possible remedies outlined in this paper may be part of a broader package of remedies that we think may be reasonable and practicable to address any concerns that we find in the funerals sector. Such a package may include:
  - (a) Information and transparency remedies to improve the preparedness of customers ahead of the point at which the funeral needs to be organised

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<sup>1</sup> Please refer to the working paper on the quality of back of house funeral director services on our [case page](#).

and to make it easier for customers to make the best choices for themselves;

- (b) market opening measures to lower barriers to entry and promote competition in the funerals sector; and
  - (c) price control regulation on the provision of funeral director and crematoria services.
4. The paper focuses on the quality of services provided by funeral directors. To the extent that we consider quality regulation may be necessary in relation to crematoria services, we will address that separately.
  5. In addition to addressing our initial concerns with the quality of services provided by funeral directors, we consider that quality regulation for funeral directors may also be necessary if we decide to impose price control regulation on the provision of funeral director services. We discuss the potential implications of price control regulation on the quality of services provided by funeral directors in paragraphs 105 to 106.
  6. We note that there is currently no legislation which regulates the specific activities of funeral directors in England, Wales and Northern Ireland, although there is some general legislation and guidance in relation to health and safety applicable. Funeral directors are not subject to any compulsory professional qualifications or training and there are no licencing or registration schemes. There are also no statutory restrictions on who can operate as a funeral director. Quality and service standards are not prescribed by law, and there is no statutory inspection regime for funeral directors' premises (other than health and safety inspection).
  7. There are, however, a number of voluntary quality standards and initiatives in place in the funerals sector in the United Kingdom (UK), including codes of practice for those funeral directors who are members of the two trade associations – the [National Association of Funeral Directors \(NAFD\)](#) and the [National Society of Allied and Independent Funeral Directors \(SAIF\)](#). Appendix A summarises the voluntary quality standards and initiatives that are currently in place in the funerals sector in the UK, excluding the development of a regulatory regime in Scotland.
  8. The regulatory position in Scotland is different, since the Scottish Parliament has legislated through the Burial and Cremation (Scotland) Act 2016 (the 2016 Act), in relation to funeral directors, to provide for the appointment of an inspector, an inspection and enforcement framework, a specific statutory Code of Practice and a licensing scheme. The former Inspector of Funeral

Directors<sup>2</sup> recommended that that these compliance and legislative elements could be developed, consulted upon, designed and implemented by 2020.<sup>3</sup> Appendix B summarises the development of the regulatory regime for the funerals sector in Scotland to date.

9. Although the CMA is closely following the development of the regulatory regime for the funerals sector in Scotland, the CMA's market investigation and the Scottish Government's new regime are separate and independent of each other, so that different considerations apply to each. The CMA's market investigation is governed by the Enterprise Act 2002 and must address specific statutory questions for markets in the United Kingdom,<sup>4</sup> whereas the Scottish Government is giving effect to its policy aims. Nevertheless, we recognise that the regulatory developments in Scotland could have implications for addressing any AECs we may find, and we intend to ensure consistency, so far as possible and appropriate, in the regulatory treatment of funeral directors across the UK. As such, we will bear the work of the Scottish Government in mind when considering what, if any, quality regulation could be introduced in Scotland and throughout the UK.
10. The paper covers:
  - (a) an outline of the circumstances where we consider quality regulation in the funerals sector may be necessary because competition (or remedial action that intends to improve competition) may not be sufficient to improve quality;
  - (b) the CMA criteria for the consideration of remedies in market investigations;
  - (c) possible remedies available to us to regulate the quality of services provided by funeral directors;
  - (d) key design considerations for these remedies;
  - (e) key implementation considerations for these remedies;

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<sup>2</sup> In July 2017, Natalie McKail was appointed as the Inspector of Funeral Directors. Her appointment came to an end on 30 June 2019 and the Scottish Government is in the process of scoping out the roles and responsibilities for a new Inspector.

<sup>3</sup> Part 5 of the 2016 Act will give Scottish Ministers power to introduce a licensing scheme for funeral directors' businesses under s.94(1); to make regulations under s.95(1) in connection with such a licensing scheme; and to introduce a statutory code of practice (a 'funeral director's code') under s.97(1) of the 2016 Act. Part 5 is not yet in force.

<sup>4</sup> Enterprise Act 2002, section 134(4).



- (f) implications of the possible imposition of price control regulation on the quality of services provided by funeral directors; and
- (g) questions that we would like to receive views on.

## Summary

11. An effective and proportionate quality regulatory regime for funeral directors could include the following elements:
  - (a) Clear requirements for funeral directors in the form of, for example, statutory minimum standards.
  - (b) Effective monitoring and enforcement of standards through, for example, a statutory licensing and inspection regime.
  - (c) An appropriate body to monitor and enforce standards.
  - (d) The collection and dissemination of information to customers on the quality of services provided by funeral directors.
12. We think that it may be appropriate to focus quality regulation on back of house standards, as we think that improving competition would only lead to very limited improvements in the quality of back of house standards. This is because customers cannot easily observe or assess these standards and therefore, there is limited incentive for funeral directors to address any shortcomings in back of house operations and processes.
13. We consider that the following back of house services provided by funeral directors are likely to most appropriate to fall under the scope of any new quality regulatory regime:
  - (a) Collection and transport of the deceased.
  - (b) Care, storage and preparation of the deceased.
14. We think that in order to provide these services to an acceptable minimum level of quality, funeral directors will require:
  - (a) Suitable premises, facilities and equipment, including facilities for the storage and preparation of the deceased, having (or having access to) sufficient and appropriate refrigeration facilities, and (if embalming is to be carried out at the funeral directors' premises) access to embalming facilities;

- (b) appropriate education and training, including continued professional development (CPD). This may include the necessary accredited technical education and/or training for relevant staff,<sup>5</sup> management training for those with management responsibility, and some form of 'fit and proper' test for those with company director level responsibility;
  - (c) appropriate governance processes and procedures to monitor quality standards, including suitable procedures to monitor premises, facilities and equipment and for the identification of the deceased; and
  - (d) an appropriate complaint handling and customer redress process to ensure that any incidences of funeral directors failing to meet the required standards can be effectively resolved and the customer appropriately recompensed. This would also support customers in the resolution of complaints related to those services that they are only able to observe after they have engaged the funeral director. The funeral directors' own complaint handling and redress policies could be supported by an independent alternative dispute resolution (ADR) scheme and/or an independent complaints adjudicator.
15. Table 1 below outlines the possible scope of quality regulation of back of house standards provided by funeral directors. Our initial view is that a predominantly principles-based regulatory approach (rather than a set of prescriptive rules) will better take account of the diversity of funeral directors and their varying service delivery models. The purpose of the table is not to set out firm proposals on quality regulation. Rather, it is to provide an analytical framework to elicit views on the appropriate possible scope of quality regulation of back of house standards.

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<sup>5</sup> This could include education and/or training for funeral directors, as well as for other staff, such as funeral arrangers/administrators and funeral service operatives/assistants/drivers/bearers.

**Table 1: Possible quality regulation of back of house standards**

<b>Back of house standard</b>	<b>Principle</b>	<b>Desired outcomes</b>
Collection and transport of the deceased	The deceased is treated with respect and dignity at all times during the collection from their place of death and transport to the funeral director's premises	<ul style="list-style-type: none"> <li>• Staff responsible for the collection and transport of the deceased are trained to do so in a manner that prioritises the respect and dignity of the deceased</li> <li>• Staff receive appropriate consent from the bereaved before collecting and transporting the deceased</li> <li>• The deceased and their possessions are appropriately protected/secured during collection and transport</li> <li>• Vehicles and equipment used for the collection and transport of the deceased are fit for purpose and regularly inspected</li> <li>• The funeral director has suitable procedures in place for the identification of the deceased</li> </ul>
Care, storage and preparation of the deceased	The respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<ul style="list-style-type: none"> <li>• Care, storage and preparation of the deceased complies with the HSE's guidance on managing the risk of infection when handling the deceased</li> <li>• Size of body storage facilities reflects anticipated body storage requirements</li> <li>• Storage capacity includes contingency arrangements for a temporary increase in storage requirements</li> <li>• The funeral director has, or has access to, via a third party, sufficient, clean and secure refrigeration facilities</li> <li>• The bereaved is informed of where the deceased is stored</li> </ul>
Premises, facilities and equipment	All premises, facilities and equipment are designed and maintained to ensure that the respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<p>Facility design</p> <ul style="list-style-type: none"> <li>• Premises, facilities and equipment are secure and accessible by authorised persons only</li> <li>• Premises, facilities and equipment are clean, well maintained and regularly inspected</li> <li>• Premises, facilities and equipment can accommodate all body types and care services offered by the funeral director</li> </ul> <p>Embalming*</p>

Back of house standard	Principle	Desired outcomes
		<ul style="list-style-type: none"> <li>• Embalmers employed or otherwise engaged by the funeral director are appropriately qualified (eg certified by the British Institute of Embalming (BIE))</li> <li>• The funeral director has a separate area for embalming</li> <li>• Embalming facilities comply with HSE guidance on managing the risk of infection when handling the deceased and Control of Substances Hazardous to Health Regulations 2002</li> </ul>
Education and training†	All staff have the necessary training and/or education to enable them to carry out their duties with respect and dignity for the deceased	<ul style="list-style-type: none"> <li>• Staff meet the necessary educational and technical requirements for their role</li> <li>• Staff regularly undertake the necessary training and other forms of CPD to maintain their professional competence</li> </ul>
Governance processes and procedures	The funeral director's governance arrangements enable them to monitor and uphold back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has appropriate governance processes and procedures in place in respect of back of house standards, including for the identification of the deceased, any arrangements with third parties and the education and training of staff</li> <li>• Where embalming takes place, the funeral director explains the procedure and obtains the customer's permission prior to the procedure taking place</li> <li>• The funeral director undertakes regular inspections to monitor and uphold back of house standards and resolves any issues identified during inspections effectively and promptly</li> </ul>
Complaint handling and customer redress	The funeral director's complaint handling and customer redress process enables them to resolve any issues with back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has a complaint handling process in place which: <ul style="list-style-type: none"> <li>○ is easy to use and understand;</li> <li>○ provides customers with a variety of methods to submit a complaint;</li> <li>○ requires them to investigate and resolve complaints promptly and fairly and, if applicable, provide appropriate redress in a timely manner;</li> <li>○ ensures that all staff dealing with complaints are appropriately trained; and</li> <li>○ ensures that all information relating to the complaint handling process is available to customers.</li> </ul> </li> </ul>

Source: CMA analysis.

\* The requirements in relation to embalming are only intended to apply where the funeral director has embalming facilities at its premises.

†The Scottish Government believes that funeral directors, funeral arranger/administrators and funeral service operatives/assistants/drivers/bearers should have access to accredited training or qualifications (eg accredited by the Scottish Qualifications Authority, or by another official UK accreditation body). Currently, the Scottish Government is of the view that the infrastructure is not yet in

place to deliver widespread accredited training and qualifications to Scotland's funeral directors and funeral arrangers/administrators or funeral service operatives/assistants/drivers/bearers and as such, training and qualifications have not been included in the draft Code of Practice for Funeral Directors. However, the Scottish Government believes that widely available accredited training and qualifications is a natural and necessary step for the funeral industry to take.

## Need for quality regulation

16. To address our initial concerns with the quality of services provided by funeral directors, we could consider remedies that enable competition by removing obstacles to competition or stimulating actual or potential competition and remedies that control the detrimental effects arising from any AEC.<sup>1</sup>
17. We currently consider that controlling outcomes through quality regulation, in addition to, or in support of, remedial action taken to address quality by improving competition, may be necessary to address any concerns for the following reasons:
  - (a) We think it may be possible that issues relating to the quality of those services that customers can observe and assess (ie front of house standards) can be improved through our proposed potential remedies to improve the transparency and availability of information for customers, in order to promote improved competition in the funerals sector.<sup>2</sup> However, we think that any improvement in competition will only lead to limited improvements in the quality of back of house standards, particularly the care of the deceased. Given the lack of visibility, we consider that there may be limited incentives for funeral directors to address any issues with back of house standards.
  - (b) Although our proposed potential information and transparency remedies may be designed to support customers in assessing the quality of services provided by funeral directors, the stress and difficulty following a bereavement may limit the extent to which some customers wish to, and are able to, engage with the market. We consider this is particularly likely to be the case with regards to back of house standards, given the difficulty for customers to easily observe or assess these standards.<sup>3</sup> Under these testing circumstances, where customers may be particularly vulnerable, we think that quality regulation may be necessary.
  - (c) There appears to be an assumption amongst many customers that the funerals sector is already subject to quality regulation. For example, the CMA's market study consumer research found that consumers often

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<sup>1</sup> [Guidelines for market investigations: Their role, procedures, assessment and remedies \(CC3 \(Revised\)\)](#), CMA, 1 April 2013, paragraphs 370 to 380.

<sup>2</sup> Please refer to the working paper on information and transparency remedies.

<sup>3</sup> See, for example, [Funerals market study. Final report and decision on a market investigation reference](#), CMA, 28 March 2019, paragraph 7.1; [Quaker Social Action's response to the Issues Statement](#), page 2; and [Co-operative Group response to the Issues Statement](#), paragraph 3.1.1.

assume that funeral directors meet industry standards and third party research found that two in five consumers (40%) believe that funeral directors are regulated by the Government.<sup>4</sup> This is likely to have an impact upon the extent to which customers consider it necessary to engage with the market. Therefore, quality regulation may be necessary to address the gap between customer expectation and the current reality.

## Framework for consideration of remedies

18. If we find that there is any AEC(s), we are required to decide the following questions:<sup>5</sup>
  - (a) whether we should take action for the purpose of remedying, mitigating or preventing the AEC or any detrimental effect(s) on customers so far as it has resulted from, or may be expected to result from, the AEC;
  - (b) whether we should recommend the taking of action by others for those purposes; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
19. A detrimental effect on customers is defined as one taking the form of:<sup>6</sup>
  - (a) Higher prices, lower quality or less choice of goods and services in any market in the UK (whether or not the market to which the feature or features concerned related); or
  - (b) Less innovation in relation to such goods or services.
20. When deciding whether any remedial action should be taken and, if so, what action should be taken, the Enterprise Act 2002 requires the CMA 'in particular to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable' to the AEC and any detrimental effects on customers so far as resulting from the AEC.<sup>7</sup>
21. The CMA will consider how comprehensively possible remedy options address the AEC and/or its detrimental effects and whether they are effective and proportionate.<sup>8</sup> The CMA may also have regard, in accordance with the

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<sup>4</sup> [Funeral market study](#), paragraph 4.19(c)

<sup>5</sup> Enterprise Act 2002, section 134(4).

<sup>6</sup> Enterprise Act 2002, section 134(5).

<sup>7</sup> Enterprise Act 2002, s 134(6).

<sup>8</sup> [CC3](#), paragraph 329.

Enterprise Act 2002, to any relevant customer benefits (RCBs) of the market feature or features giving rise to the AEC or AECs.<sup>9</sup>

22. The CMA's preference is to deal comprehensively with the cause or causes of the AECs wherever possible, and by this means significantly increase competitive pressures in a market within a reasonable period of time.
23. While generally preferring to address the causes of the AEC, the CMA will consider introducing measures which mitigate the harm to customers created by competition problems, for example if other measures are not available, or as an interim solution while other measures take effect.<sup>10</sup>
24. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including their practicability.<sup>11</sup> The effect of any remedy is always uncertain to some degree.
25. Assessing the effectiveness and practicability of any remedy may involve the consideration of several dimensions.<sup>12</sup> First, a remedy should be capable of effective implementation, monitoring and enforcement. Secondly, the timescale over which a remedy is likely to have effect will be considered. Thirdly, remedies may need to take into account existing laws and regulations. Fourthly, where more than one measure could be introduced as part of a remedy package, the CMA will consider the way the measures are expected to interact with each other.
26. The CMA in considering the reasonableness of different remedy options will have regard to their proportionality.<sup>13</sup> The CMA's assessment of proportionality will depend on the particular facts and circumstances of a case. In making an assessment of proportionality, the CC is guided by the following principles. A proportionate remedy is one that:
  - (a) is effective in achieving its legitimate aim;
  - (b) is no more onerous than needed to achieve its aim;
  - (c) is the least onerous if there is a choice between several effective measures; and
  - (d) does not produce disadvantages which are disproportionate to the aim.<sup>14</sup>

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<sup>9</sup> Enterprise Act 2002, s134(7); CC3, paragraph 329.

<sup>10</sup> CC3, paragraphs 330 and 333.

<sup>11</sup> More detail on how the CMA may assess effectiveness is in CC3 from paragraph 334.

<sup>12</sup> CC3, paragraph 335-341.

<sup>13</sup> More detail on how the CMA may assess proportionality is in CC3 from paragraph 342.

<sup>14</sup> CC3, paragraphs 342 to 344.



27. We note that any decision on individual remedies will need to consider the remedies package in its entirety as to:
- (a) whether the individual remedy is effective and proportionate considering the rest of the package, and
  - (b) that the package as a whole is effective and proportionate.
28. In reaching a judgment about whether to proceed with a particular remedy, the CMA will consider its potential effects—both positive and negative—on those persons most likely to be effected by it.<sup>15</sup>
29. In the event that the CMA reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare, but might include situations:
- (a) in which no practicable remedy is available, including any possible recommendations to others;
  - (b) where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC; or
  - (c) where RCBs accruing from the market features are large in relation to the AEC and would be lost as a consequence of any appropriate remedy.<sup>16</sup>
30. The CMA's updated Market Investigation guidance allows the CMA greater time to consider potential remedies, and earlier discussion with parties.<sup>17</sup> However, the consideration of any possible remedies is always contingent on an AEC finding having been reached.<sup>18</sup>

## **Possible quality regulation remedies**

31. In this section, we set out the possible remedies to regulate the quality of services provided by funeral directors to address any AEC(s).
32. The purpose of quality regulation would be to improve and maintain the quality standards of funeral directors. This could also help public trust and confidence in the sector. We consider that an effective and proportionate

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<sup>15</sup> CC3, paragraph 348-353.

<sup>16</sup> CC3, paragraphs 354 to 369.

<sup>17</sup> Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (Revised July 2017) (CMA3).

<sup>18</sup> CMA3, paragraph 3.50.

quality regulatory regime for funeral directors could include the following elements:

- (a) Clear requirements for funeral directors in the form of, for example, statutory minimum standards.
  - (b) Effective monitoring and enforcement of standards through, for example, a statutory licensing and inspection regime.
  - (c) An appropriate body to monitor and enforce standards.
  - (d) The collection and dissemination of information to customers on the quality of services provided by funeral directors.
33. The introduction of statutory minimum standards for back of house services could ensure that funeral directors deliver acceptable levels of service to customers. We note that there are existing codes of practice for some funeral directors,<sup>19</sup> but these codes are voluntary, differ as between the two trade associations, and the membership does not cover the entire sector – we estimate that the membership of [NAFD](#) and [SAIF](#) together represents just over 75% of funeral directors.<sup>20</sup> We do not envisage that the CMA could be responsible for setting and monitoring minimum standards. Rather, the CMA could identify an appropriate body to set those standards, or recommend a new body be created for this purpose.
34. The introduction of a statutory licensing and inspection scheme, whereby only those undertakings who are granted authority by a designated licensing body could operate as funeral directors, could help ensure that funeral directors deliver acceptable levels of service to customers. In addition, the designated licensing body could work closely with providers to resolve effectively any problems relating to service quality. As with statutory minimum standards, the CMA could identify an appropriate body to develop, implement and administer the licensing and inspection scheme, or recommend a new body be created for this purpose.
35. In determining an appropriate body to monitor and enforce quality standards, we could recommend to Government to extend the powers of an existing body or to establish a new sector regulator.

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<sup>19</sup> The two main trade associations representing funeral directors, NAFD and SAIF, both set standards of service through their codes of practice.

<sup>20</sup> Based on the overall numbers of funeral directors and branches in the UK estimated in an unpublished 2017 report, we estimate that between them, their membership represents just over 75% of funeral director branches (see [Funerals market study](#), paragraph 2.50).

36. We think that in addition to effective and proportionate quality regulation, customers could be further supported in their engagement with the funerals sector by the collection and dissemination of information to customers on the quality of services provided by funeral directors, in order to enable them to access and compare information on funeral directors' service quality. This information could be published on the websites, and displayed at the premises, of funeral directors, disseminated by trade associations and voluntary groups, and used by intermediaries, such as price comparison websites (PCWs). The publication of the back of house standards of funeral directors may also encourage funeral directors to improve their back of house standards beyond minimum standards, in order to preserve or improve their reputation amongst customers.

## **Remedy design**

37. We consider that the key remedy design considerations are:
- (a) which of the services provided by funeral directors should be included under the scope of a quality regulatory regime;
  - (b) how to effectively monitor and enforce compliance with quality regulation;
  - (c) identifying who is best placed to monitor compliance;
  - (d) the potential unintended consequences of the introduction of quality regulation and our plans to address these issues; and
  - (e) what information to collect on service quality, how to effectively collect it and how to use that information to improve customer understanding of, and engagement with, the sector.
38. The analysis below is based on our understanding of the funerals sector to date. We will continue to develop our thinking in line with the findings of our competition assessment.
39. We note that quality regulation could be implemented under either an outcomes-based or rules-based regulatory model (or a combination of the two models). A rules-based regulatory model typically involves regulatory requirements that are precisely drafted and prescriptive and gives limited flexibility to those being regulated in meeting those requirements. This approach is generally perceived as being more precise and therefore a greater constraint on regulatory discretion. In contrast, an outcomes-based regulatory model typically involves the setting of outcomes or principles, usually cast at a high level, and gives greater flexibility to those being regulated in meeting those requirements. This approach is generally

perceived as being more adaptive to market changes and enabling the regulator to be more flexible in its approach to enforcement.<sup>21</sup>

40. Under an outcomes-based model, the body tasked with monitoring and enforcing quality standards for funeral directors could establish a set of principles that reflect a minimum acceptable level of quality in respect of back of house standards. Under a rules-based model, the designated body could prescribe specific requirements for back of house standards. As set out in paragraphs 81 to 82, our initial view is that the use of a predominantly outcomes-based regulatory model may be appropriate for the funerals sector, which is highly fragmented and diverse, as it will provide the designated body with a degree of flexibility in monitoring and enforcing compliance and ensuring that a rigid approach does not inappropriately constrain the development of different business models in the sector.

### **Scope of services**

41. In order to determine the services provided by funeral directors (and the aspects of service quality) that could fall under the scope of a quality regulatory regime, we have considered:
  - (a) the scope of the existing voluntary quality standards for funeral directors in the UK, specifically the codes of conduct of NAFD and SAIF, the accreditation scheme operated by the [Good Funeral Guide](#),<sup>22</sup> and the draft Code of Practice for funeral directors recently published for consultation by the [Funeral Service Customer Standards Review \(FSCSR\)](#);<sup>23</sup>
  - (b) the standards currently in place for public mortuaries in the UK – the [Human Tissue Authority \(HTA\)](#), amongst other responsibilities, sets standards and guidance for public mortuaries where post-mortem examinations take place in England, Wales and Northern Ireland;<sup>24</sup>
  - (c) the relevant health and safety guidelines in place for funeral directors' premises in the UK – the [Health and Safety Executive \(HSE\)](#) provides guidance on managing the risks of infection when handling the deceased;

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<sup>21</sup> [Goals-based and rules-based approaches to regulation. BEIS Research Paper Number 8](#), May 2018.

<sup>22</sup> The Good Funeral Guide is a not-for-profit social enterprise company dedicated to supporting, empowering and representing the interests of dying and bereaved people living in the UK.

<sup>23</sup> The FSCSR is an industry group consisting of NAFD, SAIF, some large and independent funeral directors, charities and bereavement groups and customer facing organisations, which was established in November 2018 to seek an industry-wide consensus around how to improve customer outcomes in the funeral directing sector.

<sup>24</sup> [Health Scotland](#) is responsible for the regulation of post mortem establishments in Scotland.

- (d) the regulatory regime for the funerals sector in Scotland and proposals for its further development; and
  - (e) the scope of quality regulation of funeral directors in international markets.
- 42. Items (a) to (c) are set out in Appendix A, the development of a regulatory regime for the funerals sector in Scotland is outlined in Appendix B, and the scope of quality regulation of funeral directors in international markets is summarised in Appendix C.
- 43. As explained in paragraph 17(a), we think that it may be appropriate to focus quality regulation on back of house standards, as we think that improving competition would only lead to very limited improvements in the quality of back of house standards. This is because customers cannot easily observe or assess these standards and therefore, there is limited incentive for funeral directors to address any shortcomings in back of house operations and processes.
- 44. We think that there may be less need for quality regulation for front of house standards. For these standards, there is greater scope for improved transparency to have a beneficial impact on competition and thereby improve quality, subject to us being confident that it is possible to increase competition in the funerals sector and that an increase in competition in this sector is likely to deliver improved outcomes. However, we are aware that the inspection regime in Scotland includes elements of front of house standards (see Appendix B paragraph 30), which could complement:
  - (a) quality regulation of back of house standards; and
  - (b) the inclusion of both front of house and back of house standards in the information on service quality that is collected and disseminated to customers to improve their engagement with and understanding of the sector (see paragraphs 87 to 98).
- 45. Based on our review of the scope of existing voluntary quality standards for funeral directors in the UK, the scope of quality regulation of funeral directors in international markets and the development of a regulatory regime for the funerals sector in Scotland, we think that the following back of house services provided by funeral directors are likely to most appropriate to fall under the scope of any new quality regulatory regime:
  - (a) collection and transport of the deceased; and
  - (b) care, storage and preparation of the deceased.

46. We think that in order to provide these services to an acceptable minimum level of quality, funeral directors are likely to require:
- (a) suitable premises, facilities and equipment, including facilities for the storage and preparation of the deceased, having (or having access to) sufficient and appropriate refrigeration facilities, and (if embalming is to be carried out at the funeral directors' premises) access to embalming facilities;
  - (b) appropriate education and training, including continued professional development (CPD). This may include the necessary accredited technical education and/or training for relevant staff,<sup>25</sup> management training for those with management responsibility, and some form of 'fit and proper' test for those with company director level responsibility;
  - (c) appropriate governance processes and procedures to monitor quality standards, including suitable procedures to monitor premises, facilities and equipment and for the identification of the deceased; and
  - (d) an appropriate complaint handling and customer redress process to ensure that any incidences of funeral directors failing to meet the required standards can be effectively resolved and the customer appropriately recompensed. This could also support customers in the resolution of complaints related to those services that they are only able to observe after they have engaged the funeral director. The funeral directors' own complaint handling and redress policies could be supported by an independent ADR scheme and/or an independent complaints adjudicator (see paragraph 77).<sup>26</sup>
47. Table 1 below outlines the possible scope of quality regulation of back of house standards provided by funeral directors. The regulatory framework set out in the table is based on an outcomes-based regulatory model, because, as explained in paragraphs 39 to 40, our initial view is that a predominantly outcomes-based regulatory approach will better take account of the diversity of funeral directors and their varying service delivery models.
48. In developing the table, we have taken into account:

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<sup>25</sup> This could include education and/or training for funeral directors, as well as for other staff, such as funeral arrangers/administrators and funeral service operatives/assistants/drivers/bearers.

<sup>26</sup> We note that members of NAFD must comply with a customer's wishes to proceed to conciliation or arbitration under the Funeral Arbitration Scheme, an independent conciliation and arbitration scheme designed to resolve complaints from clients relating to NAFD members.

- (a) the scope of the existing voluntary quality standards for funeral directors in the UK;
  - (b) the FSCSR's draft Code of Practice for funeral directors;
  - (c) the standards currently in place for public mortuaries in the England, Wales and Northern Ireland (set by the HTA);
  - (d) the HSE's guidance on managing the risks of infection when handling the deceased;
  - (e) the [draft Code of Practice for Funeral Directors](#) in Scotland;<sup>27</sup> and
  - (f) the scope of quality regulation of funeral directors in international markets.
49. Where we have considered these existing regulations and standards, we have modified them so that our regulatory framework specifically addresses the concerns that we have identified to date and to avoid the creation of duplicative or overlapping regulation.
50. The purpose of the table is not to set out firm proposals on any potential quality regulation. Rather, it is to provide an analytical framework to elicit views on the appropriate possible scope of quality regulation of back of house standards. The table should be read in conjunction with the consultation questions set out in paragraphs 107 to 119, and we also welcome views on each element of the regulatory framework outlined in the table in addition to those questions.

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<sup>27</sup> We note that the consultation on the draft Code closed on 20 September 2019 and the final Code may be different from the draft Code published for the purposes of consultation.

**Table 1: Possible quality regulation of back of house standards**

<b>Back of house standard</b>	<b>Principle</b>	<b>Desired outcomes</b>
Collection and transport of the deceased	The deceased is treated with respect and dignity at all times during the collection from their place of death and transport to the funeral director's premises	<ul style="list-style-type: none"> <li>• Staff responsible for the collection and transport of the deceased are trained to do so in a manner that prioritises the respect and dignity of the deceased</li> <li>• Staff receive appropriate consent from the bereaved before collecting and transporting the deceased</li> <li>• The deceased and their possessions are appropriately protected/secured during collection and transport</li> <li>• Vehicles and equipment used for the collection and transport of the deceased are fit for purpose and regularly inspected</li> <li>• The funeral director has suitable procedures in place for the identification of the deceased</li> </ul>
Care, storage and preparation of the deceased	The respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<ul style="list-style-type: none"> <li>• Care, storage and preparation of the deceased complies with the HSE's guidance on managing the risk of infection when handling the deceased</li> <li>• Size of body storage facilities reflects anticipated body storage requirements</li> <li>• Storage capacity includes contingency arrangements for a temporary increase in storage requirements</li> <li>• The funeral director has, or has access to, via a third party, sufficient, clean and secure refrigeration facilities</li> <li>• The bereaved is informed of where the deceased is stored</li> </ul>
Premises, facilities and equipment	All premises, facilities and equipment are designed and maintained to ensure that the respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<p>Facility design</p> <ul style="list-style-type: none"> <li>• Premises, facilities and equipment are secure and accessible by authorised persons only</li> <li>• Premises, facilities and equipment are clean, well maintained and regularly inspected</li> <li>• Premises, facilities and equipment can accommodate all body types and care services offered by the funeral director</li> </ul> <p>Embalming*</p>



Back of house standard	Principle	Desired outcomes
		<ul style="list-style-type: none"> <li>• Embalmers employed or otherwise engaged by the funeral director are appropriately qualified (eg certified by the British Institute of Embalming (BIE))</li> <li>• The funeral director has a separate area for embalming</li> <li>• Embalming facilities comply with HSE guidance on managing the risk of infection when handling the deceased and Control of Substances Hazardous to Health Regulations 2002</li> </ul>
Education and training†	All staff have the necessary training and/or education to enable them to carry out their duties with respect and dignity for the deceased	<ul style="list-style-type: none"> <li>• Staff meet the necessary educational and technical requirements for their role</li> <li>• Staff regularly undertake the necessary training and other forms of CPD to maintain their professional competence</li> </ul>
Governance processes and procedures	The funeral director's governance arrangements enable them to monitor and uphold back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has appropriate governance processes and procedures in place in respect of back of house standards, including for the identification of the deceased, any arrangements with third parties and the education and training of staff</li> <li>• Where embalming takes place, the funeral director explains the procedure and obtains the customer's permission prior to the procedure taking place</li> <li>• The funeral director undertakes regular inspections to monitor and uphold back of house standards and resolves any issues identified during inspections effectively and promptly</li> </ul>
Complaint handling and customer redress	The funeral director's complaint handling and customer redress process enables them to resolve any issues with back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has a complaint handling process in place which: <ul style="list-style-type: none"> <li>○ is easy to use and understand;</li> <li>○ provides customers with a variety of methods to submit a complaint;</li> <li>○ requires them to investigate and resolve complaints promptly and fairly and, if applicable, provide appropriate redress in a timely manner;</li> <li>○ ensures that all staff dealing with complaints are appropriately trained; and</li> <li>○ ensures that all information relating to the complaint handling process is available to customers.</li> </ul> </li> </ul>

Source: CMA analysis.

\* The requirements in relation to embalming are only intended to apply where the funeral director has embalming facilities at its premises.

†The Scottish Government believes that funeral directors, funeral arranger/administrators and funeral service operatives/assistants/drivers/bearers should have access to accredited training or qualifications (eg accredited by the Scottish Qualifications Authority, or by another official UK accreditation body). Currently, the Scottish Government is of the view that the infrastructure is not yet in

place to deliver widespread accredited training and qualifications to Scotland's funeral directors and funeral arrangers/administrators or funeral service operatives/assistants/drivers/bearers and as such, training and qualifications have not been included in the draft Code of Practice for Funeral Directors. However, the Scottish Government believes that widely available accredited training and qualifications is a natural and necessary step for the funeral industry to take.

## ***Effective monitoring and enforcement***

51. In thinking about how to effectively monitor and enforce compliance with quality regulation, we have considered existing licensing and inspection schemes in the funerals sector in the UK and abroad, as well as similar schemes in other regulated sectors in the UK.

### *Licensing*

#### *International markets*

52. A number of countries have licensing schemes for funeral directors, including Australia, Canada, France, Spain and the USA (see Appendix C).
53. Our key observations of these licensing schemes are:
- (a) Licensing can apply to both businesses and individuals. For businesses, the requirements typically focus on the technical specifications of premises, facilities and equipment, as well as funeral service delivery. For individuals, the licensing requirements typically relate to professional competence (ie training, education, conduct and experience).
  - (b) Operators of the schemes typically use sanctions (including fines and suspension or revocation of a licence) to enforce compliance.
  - (c) Operators typically require periodic renewals of licences and use the renewal process as an opportunity to assess ongoing compliance with licence conditions.

#### *Proposed licensing scheme for funeral directors in Scotland*

54. In August 2019, the Inspector of Funeral Directors recommended to the Scottish Government to introduce and launch a scheme of Progressive Licensing for funeral directors in Scotland by December 2020.
55. The Inspector of Funeral Directors recommended that the scheme should be business (including all locations) and activity focused initially, but that the Scottish Government may want to review the value of individual licences and conditions of licence, such as mandatory training requirements, in the future (following an evaluation of the initial licensing scheme). The Inspector also recommended that the Scottish Government should consider setting up a publicly accessible register of licensed funeral directors, in order to inform the public and for the bereaved to make choices which are appropriate for them and their loved ones.

### *Other regulated sectors in the UK*

56. A number of regulators in the UK administer a form of licensing or registration scheme to monitor and enforce quality standards in their respective sectors. For example:

(a) Care homes, managers of care homes and members of staff with director level responsibility are required to register with the [Care Quality Commission \(CQC\)](#) in England:<sup>33</sup>

(i) Care homes are assessed against the CQC's five key questions – whether the provider is safe, effective, caring, responsive to people's needs and well led. As part of their application, care homes must include a statement of purpose, which includes their aims and objectives and the services they provide, and assurance of their financial position. This assessment is conducted for each individual care home.

(ii) Managers must demonstrate that they have the necessary qualifications, competence, skills and experience to carry on the regulated activity or supervise its management.

(iii) Directors must meet the CQC's fit and proper person requirements.

The CQC's inspections assess both the care home and care home staff – the inspector speaks with people using the service and their visitors, staff, volunteers and visiting professionals to assess all of the key questions, and also reviews relevant records and inspects the layout, safety, cleanliness and suitability of the premises, facilities and equipment.

(b) The HTA licenses mortuaries where post-mortem examinations take place in England, Wales and Northern Ireland.<sup>34</sup>

(c) The [Office for Students \(OfS\)](#) maintains a single register for higher education providers in England.<sup>35</sup>

(d) The [Solicitors Regulation Authority \(SRA\)](#) maintains a register of all authorised legal services providers in England and Wales.<sup>36</sup> The SRA

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<sup>33</sup> The Regulation and Quality Improvement Authority, the Care Inspectorate and the Care Inspectorate Wales perform similar functions in Northern Ireland, Scotland and Wales respectively.

<sup>34</sup> [Health Scotland](#) is responsible for the regulation of post mortem establishments in Scotland.

<sup>35</sup> The higher education division of the Department for the Economy, the Scottish Funding Council and the Higher Education Funding Council for Wales perform similar functions in Northern Ireland, Scotland and Wales respectively.

<sup>36</sup> The Law Society of Scotland and The Law Society of Northern Ireland perform similar functions in Scotland and Northern Ireland respectively.

regulates both solicitors and law firms –the SRA’s Principles and Code of Conduct apply to solicitors and law firms.

57. Our research into these regulators shows that the use of a licensing or registration scheme to grant authority to providers to operate in their respective sectors enables the regulator to conduct an upfront assessment of all providers seeking a licence or registration – only those providers who meet the required regulatory standards are granted a licence or added to a register. This upfront assessment typically requires the provider to submit an application form (with supporting evidence) and pay a licence/registration fee (this becomes an annual fee if the provider is granted a licence or added to a register). The assessment may also include a site visit or inspection to enable the regulator to conduct an in-depth assessment of whether the provider is meeting the required standards. As well as enabling the regulator to assess whether the provider meets the licensing or registration standards, the data collected by the regulator during the licensing or registration assessment process also informs the regulator’s approach in relation to the ongoing monitoring of that provider.

### *Inspection*

#### *NAFD*

58. NAFD has a Committee for Professional Standards and a Disciplinary Committee (with an independent chair) to uphold standards. Compliance with NAFD’s [Code of Practice](#), which covers service standards, is monitored by Standards and Quality Managers. The Standards and Quality Managers also inspect member firms under NAFD’s Code of Professional Standards, an advisory code which covers ‘back of house’ standards and the operational issues of running a funeral home. NAFD may enforce compliance with standards through a range of sanctions on members, including fines, suspension of membership and expulsion.
59. Please refer to our working paper on the quality of back of house funeral director services, for further information on NAFD inspections.

#### *SAIF*

60. SAIF’s Quality Assurance Programme requires member firms’ individual offices to be visited and inspected to check for compliance with SAIF’s [Code of Practice](#). SAIF may enforce a range of sanctions on members, including suspension of membership and expulsion.

61. Please refer to our working paper on quality of back of house funeral director services, for further information on SAIF inspections.

#### *Good Funeral Guide*

62. The Good Funeral Guide visits funeral directors that seek its accreditation (see Appendix A, paragraph 34 for its accreditation criteria). The Good Funeral Guide re-visits the funeral director after three years if it wishes to retain its accreditation.
63. If a funeral director is successful in obtaining accreditation:
- (a) the Good Funeral Guide publishes its review on its website; and
  - (b) the funeral director receives:
    - (i) a 'recommended by' sticker to place in a prominent position at its premises;
    - (ii) a certificate for display at its premises; and
    - (iii) an electronic logo for use in its marketing material.
64. The Good Funeral Guide does not publish any information on those funeral directors that fail accreditation.

#### *Scotland*

65. In Scotland, the Inspector of Funeral Directors' inspection approach focuses on five key areas:
- (a) culture, ethos and confidence in management;
  - (b) conveyance and care of the deceased;
  - (c) understanding, recording and acting on the wishes of the deceased or bereaved both pre-or at need;
  - (d) asset management; and
  - (e) audit of procedures, practice and record keeping.<sup>37</sup>

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<sup>37</sup> The inspections undertaken to date by the Inspector of Funeral Directors were conducted on an informal basis, as the Code of Practice for Funeral Directors and licensing scheme are not yet in place.

### *International markets*

66. A number of countries have inspection schemes for funeral directors, including Australia, Canada, France, Spain and the USA (see Appendix C). Each market takes a similar approach as to the factors that the relevant body inspects.
67. Our key observations of these inspection schemes are:
- (a) inspections enable the relevant body to assess a provider's compliance with licence conditions and other relevant regulations;
  - (b) inspections occur at regular intervals, although the frequency and nature of the inspections vary considerably across the markets that we have considered; and
  - (c) inspections assess premises, facilities and equipment as well as the processes and procedures in place to uphold quality standards.

### *Other regulated sectors in the UK*

68. A number of regulators in the UK use an inspection scheme to monitor and enforce quality standards in their respective sectors:
- (a) The CQC inspects and rates providers at agreed frequencies based on their existing CQC rating and the level of risk.<sup>38</sup> If the information on the provider held by the CQC suggests that the quality of care in a service has improved or declined, the CQC may follow this up between inspections or ask providers to provide further information or explain the reasons for this change. It may also decide to re-inspect that service. If there are significant concerns, the CQC may carry out a [focused inspection](#) or bring forward a [comprehensive inspection](#).
  - (b) In partnership with the [Food Standards Agency \(FSA\)](#),<sup>39</sup> local authorities plan a programme of inspections of food establishments every year. The frequency of inspections depends on the potential risk to public health – the time between inspections varies from six months for the highest risk businesses to two years for lower risk businesses. For some very low risk businesses, the interval between inspections may be longer than two

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<sup>38</sup> CQC inspections can be announced or unannounced.

<sup>39</sup> The FSA is a non-ministerial Government department responsible for protecting public health in relation to food in England, Wales and Northern Ireland. Food Standards Scotland performs similar functions in Scotland.

years.<sup>40</sup> As part of its modernisation programme, the FSA is considering how it can use the existing data it holds on food establishments to better inform the control activities of local authorities and ensure that they take a proportionate approach to the monitoring of compliance with food hygiene law (ie local authorities focus on those businesses that are non-compliant). The FSA is also considering how it might use broader data sources (eg company compliance programmes and third-party assurance processes) to inform local authority interventions.

- (c) The HTA inspects mortuaries on a cyclical basis, according to the potential risk of mortuaries not meeting the HTA's licensing standards. The HTA focuses on those mortuaries posing the higher risk, owing to the nature of activity and the impact on patients and families if things were to go wrong.

69. Despite the central role of inspections in monitoring compliance, both the CQC and the FSA also use the data they hold on providers to monitor ongoing compliance outside of the inspections cycle:

- (a) The CQC can ask providers to submit information to it by filling in a web form known as a provider information return. The information requested by the CQC can include drugs and medicines management; how the provider works with other services and professionals; staff training and supervision; and awards or initiatives that demonstrate the quality of care provided. Inspectors also have access to CQC Insight, a tool that brings together and analyses the information that the CQC holds on providers from a range of sources, including statutory notifications and safeguarding incidents. The information includes:
  - (i) contextual and descriptive information about services, including registration details;
  - (ii) current and historical ratings;
  - (iii) history of the registered managers at the service; and
  - (iv) a service's performance compared with comparable services based on a range of different data sources.
- (b) In between inspections, local authorities, in partnership with the FSA, may also monitor food businesses to ensure they are maintaining hygiene

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<sup>40</sup> For example, for those establishments that receive an FHRs rating of 5, which means that their hygiene standards are very good and fully comply with food hygiene law, the interval between inspections can be up to four years.



standards. If these checks reveal anything that might indicate that hygiene standards have deteriorated, the food safety officer will carry out an inspection and the business will get a new rating. Further, if the local authority receives a complaint or new information about a business that they are not due to inspect, and this suggests hygiene standards are not being maintained, the local authority will investigate and may inspect the business and give it a new hygiene rating.

70. Our research suggests that an inspection scheme is a powerful tool in monitoring compliance with quality standards, particularly where premises, facilities and equipment is fundamental to the provision of goods and/or services in the sector, as is the case in the funerals sector. These regulators also use data to inform their regulatory approach and to monitor ongoing compliance outside of the inspections cycle. However, there is a risk that the data may not provide a full picture of the extent to which providers are complying with regulation, as certain aspects of quality, such as the standards of premises, facilities and equipment, may only be accurately monitored during an inspection.

### *Conclusion*

71. We think that the introduction of a statutory licensing and inspection scheme for funeral directors could be an effective method of ensuring that funeral directors deliver acceptable levels of service to customers.
72. The key features of a licensing scheme could include:
- (a) Licensing of both businesses and individuals. The regulation of both businesses and individuals would be consistent with the regulatory activity of the CQC in the care homes sector, where quality of care is also difficult for customers to observe or assess. The CQC regulates care homes, managers of care homes and members of staff with director level responsibility. For providers, the regulation would likely be most effective at individual branch level, although there may also be scope for regulation at an organisational level for larger providers (eg scrutinising the governance procedures and processes that are in place to monitor quality standards across all branches). For certain individuals, such as funeral directors, it may be necessary to impose regulation to ensure that they have the necessary skills and experience to perform their role, and the regulation may also extend to those within management to ensure that they are suitable for overseeing the work of others. The regulatory approach would require a degree of flexibility to cover both larger firms and the smaller, independent funeral directors. We think that licensing would need to be phased in over an appropriate period of time to avoid

placing an undue burden on funeral directors and the body charged with administering the scheme.

- (b) A licence renewal process to enable the body tasked with administering the scheme to assess a business or individual's ongoing compliance with licence conditions.
- (c) The use of an inspection scheme to enable the scheme administrator to monitor and enforce compliance.
- (d) A robust enforcement regime, including a range of sanctions, such as fines and suspension and revocation of a licence, available to the scheme administrator to enable it to effectively enforce compliance with licence conditions.
- (e) Publicly available information on licensees, such as a register, to support customers in assessing and comparing providers.

73. The key features of an inspection scheme could include:

- (a) announced and unannounced inspections at regular intervals to assess a provider's compliance with licence conditions and other relevant regulation – the time between inspections could reflect the risk of non-compliance;
- (b) an assessment of both premises, facilities and equipment and the processes and procedures in place to uphold quality standards; and
- (c) a clear mechanism for disseminating the information collected during the licensing registration and inspection processes to customers to increase customer knowledge of and engagement with the sector.

### ***Who is best placed to monitor and enforce compliance?***

- 74. In determining an appropriate body to monitor and enforce quality standards, we could make a recommendation to Government to either extend the powers of an existing body or establish a new sector regulator.
- 75. We are currently considering whether there is an existing body or bodies that may be appropriately placed to take on this role.
- 76. We do not think that the CMA is best placed to monitor and enforce quality standards, given that its primary function is to promote competition for the benefit of consumers. We also do not think that the various organisations currently supporting some funeral directors, including NAFD, SAIF and the Good Funeral Guide, would be best placed to monitor and enforce

compliance with quality standards. Membership of these various organisations is voluntary, does not cover the entire sector, and such a model (in the case of NAFD and SAIF) would create conflicts of interest where representative bodies would also be responsible for regulating their members. However, these organisations could assist their members in complying with any quality regulatory regime

77. To the extent that elements of front of house standards are also included under the scope of a quality regulatory regime, as is the case in Scotland, an existing body may continue to be well-placed to take on such a role. However, quality regulation is only one part of a potentially broader package of remedies that we think may be reasonable and practicable to address any concerns that we find in the funerals sector. To the extent that we find that a wider package of reforms is necessary, then such a package may require broader monitoring and enforcement provisions. Under these circumstances, we would need to consider whether any existing body or bodies could take on such a role or whether a new body (or bodies) would need to be established. We think that any body tasked with monitoring and enforcing quality standards could be supported by an independent complaints adjudicator, which could also administer an independent ADR scheme for customers who are unhappy with the service they receive from a funeral director. We could either build on existing adjudication/ADR services or recommend the establishment of a new body.
78. In addition to determining who is best placed to monitor and enforce quality standards, we are also considering how the quality regulatory regime should be funded. This could be through general taxation, a levy on funeral directors or a licence fee (if a licensing scheme is introduced).

### ***Potential unintended consequences of quality regulation***

79. We think that the introduction of quality regulation for funeral directors could have the following unintended consequences:
- (a) Quality regulation may have an adverse impact on competition in the sector (if the regulation is not designed and implemented appropriately) by creating barriers to entry, expansion or innovation.
  - (b) Funeral directors may raise their prices.
  - (c) If minimum standards are introduced, this may discourage funeral directors from improving their standards above those required by law.
  - (d) If minimum standards are introduced, customers may be less likely to shop around.

## Competition

80. If we decide to impose quality regulation on funeral directors, we are conscious of the need to strike a balance between safeguarding and upholding quality standards and stimulating entry, expansion or innovation in the sector. This could be the case where improvements in the quality of service provision may require substantial capital investment and may therefore deter entry or expansion in or cause exit from the sector. We think that the use of appropriate implementation, monitoring and enforcement mechanisms, such as the provision of a reasonable transition period for funeral directors to meet regulatory requirements or a degree of flexibility in how funeral directors achieve and comply with the required standards, is likely to mitigate any possible risks associated with the diversity of businesses and business practices currently in existence in the sector.
81. We also think that the use of a predominantly outcomes-based regulatory approach (rather than a rules-based approach) may provide the body tasked with monitoring and enforcing compliance with the quality regulatory regime with a degree of flexibility in performing its role. A number of regulators in the UK use outcomes-based measures to monitor and enforce quality standards:
- (a) The OfS' [regulatory framework](#) for higher education in England sets out the outcomes that the OfS expects providers to achieve to deliver good quality higher education provision. The conditions that providers are required to satisfy to become a registered provider are expressed in terms of the outcomes that the OfS wishes to see rather than the particular approach that a provider might take to achieve such outcomes. The OfS' regulatory approach is designed to be principles-based, because the higher education sector is complex and diverse, and the imposition of a narrow rules-based approach would risk leading to a compliance culture that stifles diversity and innovation and prevents the sector from flourishing.
  - (b) The SRA's outcomes-focused approach allows legal services providers to decide how best to deliver legal services in line with regulatory requirements. The SRA's [Principles and Code of Conduct](#) set out the fundamental ethical and professional standards that the SRA expects of all firms and solicitors when providing legal services. The Code of Conduct demonstrates how the Principles apply in certain contexts through mandatory and non-mandatory provisions. The mandatory provisions include outcomes, which describe what firms and individuals are expected to achieve, in order to comply with the relevant Principles. The Code of Conduct also includes some indicative behaviours as examples of how the outcomes could be achieved.

- (c) When assessing a health and social care services provider, the CQC focuses on its five key questions – whether the provider is safe, effective, caring, responsive to people’s needs and well led. For each of these five key questions, the CQC’s [assessment framework](#) contains key lines of enquiry, prompts and sources of evidence to support inspectors in their assessment, but it does not prescribe how a provider must deliver services to align with the framework and achieve compliance.
82. Our research suggests that the use of an outcomes-based approach to quality regulation provides a regulator with a degree of flexibility in monitoring and enforcing compliance. This approach may be appropriate for the funerals sector, which is highly fragmented, and the providers are diverse, ranging from family owned and managed independent funeral directors to large firms. Our research suggests that even where an outcome-based regulatory approach is adopted, it is still possible to limit the flexibility afforded to those being regulated by establishing principles or behaviours to minimise the risk of non-compliance.

### *Prices*

83. The introduction of quality regulation may increase costs for funeral directors, as they may need to make changes to their service offering, as well as their supporting systems and processes, to comply with any quality regime. We envisage that any quality standards could largely reflect current good practice in the sector, so funeral directors who already offer an appropriate level of care to the deceased and have appropriate internal monitoring systems are unlikely to have to make material changes to their existing practices.
84. We think that the risk of funeral directors increasing their prices in response to the introduction of quality regulation can be mitigated as follows:
- (a) As explained in paragraph 80, the provision of a reasonable transition period for funeral directors to meet standards or a degree of flexibility in how providers achieve and comply with the required standards may limit the extent to which the introduction of a quality regulation regime increases costs for funeral directors.
  - (b) The possible introduction of quality regulation is part of a broader package of remedies that we are considering to improve competition in the funerals sector. For example, any potential information and transparency remedies could improve the transparency of the price of funerals, thus enabling customers to assess and compare more effectively the prices charged by funeral directors. In such a situation, if a funeral director was to increase its prices, customers would be better informed of such price rises and

would be able to secure the services of another, more competitively-priced funeral director if they chose to. As set out in our [Issues Statement](#), we are also considering whether to introduce price control regulation on the provision of funeral director and crematoria services and if introduced, this could limit the extent to which funeral directors can increase prices in response to the introduction of quality regulation.

### *Minimum standards*

85. The introduction of minimum standards may discourage some funeral directors from improving their standards above those required by law. However, we envisage that any standards would represent a baseline (ie the minimum standards necessary to ensure appropriate care of the deceased). We think that there would likely still be an incentive for funeral directors to offer services of a higher quality than those prescribed by regulation, in order to differentiate themselves from their competitors. In addition, the publication of the back of house standards of funeral directors may also encourage funeral directors to improve their standards beyond the legally acceptable baseline, in order to preserve or improve their reputation amongst customers.

### *Customer engagement*

86. The introduction of quality regulation will safeguard quality standards for those customers who do not wish to shop around prior to engaging a funeral director, but it will also benefit those customers who do wish to shop around but are unable to assess or observe back of house standards. In addition, information and transparency remedies, to the extent that they include information on the quality standards of funeral directors, may encourage those customers who might not otherwise shop around to do so and may also support customers in their assessment and comparison of funeral directors by:
- (a) helping customers to plan and navigate the process of arranging a funeral;
  - (b) improving the transparency of the price of funerals;
  - (c) giving customers more time to choose a funeral director; and
  - (d) enabling customers to provide feedback on the quality of the service they have received from their funeral director and enabling other customers to see this feedback.

## **Service quality information**

87. Our initial view is that the collection and dissemination of information to customers on the quality of services provided by funeral directors could cover both front of house and back of house standards to enable customers to conduct a holistic assessment and comparison of funeral directors.
88. For back of house standards, we think that the information could include those aspects of quality that could fall under the scope of a regulatory regime, as outlined in Table 1.
89. For front of house standards, we think that the information could include:
- (a) standard of premises, facilities and equipment used during the funeral service;
  - (b) professional competence of staff, including their expertise in planning and delivering funeral services;
  - (c) care of the bereaved; and
  - (d) customer service (eg availability of staff/hours of business, parking facilities, public transport links, accessibility (for customers with disabilities) and website and marketing materials).
90. We think that there are a number of possible ways to collect information on service quality:
- (a) Funeral directors could independently collect information to demonstrate the quality of the services they provide to customers.
  - (b) Funeral directors could complete an independent periodic survey which covers key features of service quality. For example, following its investigation into retail banking, the CMA requires current account providers to publish results from an independent survey covering a number of Core Service Quality Indicators on their websites, in branches and in promotional leaflets – the underlying data is also made available to third parties, such as PCWs and finance platforms, to enable comparison services and encourage customers to compare providers and shop around.<sup>41</sup>
  - (c) If a licensing and inspection scheme is introduced, the information collected by the body tasked with administering the scheme could be

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<sup>41</sup> See [Retail banking market investigation. Final report](#), CMA, 9 August 2016, Figure 13.2.

used to support customers in assessing the quality of services provided by funeral directors.

91. Service quality information could be displayed on the websites and premises of funeral directors, as well as any other marketing information provided to customers, such as leaflets or brochures. Other key market participants, such as trade associations and consumer groups, could also publish the information on their websites and other media.
92. As well as improving customer engagement, we think the publication of service quality information could also incentivise funeral directors to maintain or improve their standards, as the publication of information relating to quality standards could have a positive or adverse reputational impact on that provider. Therefore, the publication of service quality information may act as a mechanism for driving quality above and beyond the minimum legal standard establish under a quality regulatory regime.
93. We think that the information to be published and assessed could include key performance indicators, potentially with target levels of performance, or customer satisfaction information, which could be limited to a score indicating overall satisfaction or willingness to recommend, or it might be developed to cover a range of separate areas of service. We are aware of existing scoring or rating systems operated by the CQC and the FSA, which aim to improve customer understanding and engagement by distilling a wide range of complex information into an easily digestible form.
94. Following an inspection, the CQC gives a provider a rating on a four-point scale:
  - (a) 'Outstanding' indicates that the service is performing exceptionally well.
  - (b) 'Good' indicates that the service is performing well and meeting the CQC's expectations.
  - (c) 'Requires Improvement' indicates that the service is not performing as well as it should and the CQC has told the service how it must improve.
  - (d) 'Inadequate' indicates that the service is performing badly and the CQC has taken action against the person or organisation that runs it.
95. Providers must ensure that their CQC rating is displayed conspicuously and legibly at each location delivering a regulated service and on their website (if they have one). The CQC also publishes its inspection reports on its website. The reports include a summary section for the provider to share with each person using their service, their family and carers, and staff.



96. The FSA runs the [Food Hygiene Rating Scheme \(FHRS\)](#) in partnership with local authorities, who inspect food establishments to assess their ‘back of house’ food hygiene standards. After an inspection, the food establishment is awarded a rating from 5 to 0:
- (a) ‘5’ means hygiene standards are very good and fully comply with food hygiene law. The FHRS does not seek to measure food hygiene above the minimum legal standards.
  - (b) ‘4’ means that hygiene standards are good and broadly comply with food hygiene law.
  - (c) ‘3’ means that hygiene standards are generally satisfactory and broadly comply with food hygiene law.
  - (d) ‘2’ means that some improvement is necessary.
  - (e) ‘1’ means that major improvement is necessary.
  - (f) ‘0’ means that urgent improvement is necessary.
97. Customers are able to view food hygiene ratings at the premises of the business and also on a dedicated [website](#). A breakdown of the three elements making up the food hygiene rating is also provided with the online rating.<sup>42</sup> Detailed information on the inspection is included in the food safety officer’s inspection report.<sup>43</sup> The FSA also provides a [FHRS toolkit for businesses](#), which gives them ideas and inspiration on how to publicise their food hygiene rating online and offline, and all of the FHRS data is made available for re-use as open data.
98. The FHRS has increased customer confidence in the catering and retail sectors – 44% of respondents check the rating before deciding to purchase food from an establishment, and most commonly do so by checking the sticker displayed in the food business door or window (62%).<sup>44</sup>

## Remedy implementation

99. When taking remedial action, the CMA may act itself through exercising its order-making powers against, or through accepting undertakings from, any

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<sup>42</sup> This information is available for businesses inspected since April 2016 in England and Northern Ireland and for businesses inspected in Wales since November 2014.

<sup>43</sup> In order to view the report, customers are required to make a freedom of information (FOI) request to the local authority that carried out the inspection.

<sup>44</sup> [Chief Scientific Advisor report on FHRS](#), December 2017, page 4.

appropriate person. Alternatively, or in addition, the CMA may recommend that remedial action should be taken by others, such as Government, regulators and public authorities.<sup>45,46</sup>

100. We do not think that the implementation of quality regulation remedies through the use of undertakings is likely to be appropriate due to the difficulty and impracticality of negotiating and securing undertakings with the large number of funeral directors across the UK.
101. The introduction of a quality regulatory regime, including the potential for an extension of the powers of an existing body or the establishment of a new sector regulator, would require a recommendation to Government to introduce the necessary legislation. This may require separate recommendations to the UK Government, Scottish Government and Welsh Government and the Northern Ireland Executive, because funeral services, burial and cremation are matters that are devolved to Scotland, Wales and Northern Ireland and within the legislative competence of their respective parliament and assemblies.<sup>47</sup> The devolution of powers in this area is reflected, in Scotland, by the development of burials and cremations policy by the Scottish Government and the enactment of related legislation by the Scottish Parliament. The Welsh Government and Northern Ireland Executive have not, to date, taken forward comparable policy and legislative activity, although this remains a possibility in the future.
102. The CMA remains mindful of the devolution of powers to Scotland, Wales and Northern Ireland and the fact that participation in any proposed regulatory model covering more than one UK nation requires the consent of each devolved nation. The CMA will engage with each of the devolved administrations in developing any remedies where appropriate.
103. In making recommendations to the Scottish Government, the CMA will take into account the emergence of the distinct legislative and regulatory context in Scotland, which has resulted from the 2016 Act.
104. In addition to making recommendations to Government, the CMA could also use its order-making powers to address those areas relating to quality, which it feels may require immediate attention prior to the establishment of a regulatory regime. This may be particularly relevant if we decide to impose

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<sup>45</sup> Such recommendations do not bind the person to whom they are addressed, although the UK Government has committed to respond to any recommendation made to it within 90 days of publication of the CMA's final report.

<sup>46</sup> CC3, paragraph 327.

<sup>47</sup> Funeral services are not reserved matters pursuant to Schedule 5 to the Scotland Act 1998 or Schedule 7A to the Government of Wales Act 2006 (as amended by the Wales Act 2017) and are not excepted or reserved matters pursuant to Schedules 2 or 3 to the Northern Ireland Act 1998.

price control regulation, which will likely come into force before the establishment of a quality regulatory regime.

## **Implications of price control regulation on quality**

105. This paper has set out our emerging thinking on possible quality regulation of existing market conditions. We recognise that if we decide to impose price control regulation on the provision of funeral director services, this may impact upon the quality of services provided by funeral directors. The introduction of price control regulation may incentivise funeral directors to reduce the quality of their services as a means of reducing their costs to maintain their profit margins. Under these circumstances, we may deem that quality regulation is necessary for funeral directors to safeguard against any potential reduction in the quality of the services that funeral directors provide in response to greater control over the prices that they are able to charge customers for those services.<sup>48</sup> In addition to quality regulation, we also think that quality may be safeguarded to some extent by the provision of service quality information to customers on both the front of house and back of house standards of funeral directors (see paragraph 36).
106. As noted in paragraph 77, we also recognise that the introduction of economic regulation, in addition to quality regulation, has implications for the body charged with regulating the market. Under these circumstances, there may be greater need for a new statutory regulator, rather than extending the powers of an existing body. The new regulator could monitor compliance with economic and quality regulation, as well as wider conduct in the sector.

## **Questions**

107. To support the development of possible remedies to address our initial thinking on the quality of services provided by funeral directors, we invite views on the questions below.

### ***Remedy selection***

108. Do you agree with our proposal to focus quality regulation on the services provided by funeral directors or do you think we should also regulate the quality of services provided by crematoria operators? Please explain your answer.

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<sup>48</sup> This may also apply to crematoria operators if we decide to impose price control regulation on the provision of crematoria services.

109. Do you agree with our proposal to focus quality regulation on back of house standards? Please explain your answer.
110. What are your views on the likely effectiveness and proportionality of the remedies outlined in this working paper in addressing our initial concerns?
111. Are there any other potential remedies that we have not considered in this working paper that may address our initial concerns (as set out in our working paper on the quality of back of house funeral director services)? Please explain what those remedies are and why they would be more effective than, or suitable in addition to, our proposed remedies.

### ***Remedy design***

112. Would a predominantly outcomes-based or a rules-based regulatory model (see paragraphs 39 to 40) be more appropriate for monitoring and upholding the back of house standards of funeral directors? Please explain your answer.
113. Which of the services provided by funeral directors should be included under the scope of any quality regulatory regime, including statutory minimum standards, and why? We are particularly interested in your views on the regulatory standards set out in Table 1 and the following specific issues:
  - (a) Is refrigeration necessary for the appropriate care of the deceased?
  - (b) Is the ratio of one refrigeration space for every 50 deceased persons taken into the care of the funeral director on average per year (as proposed in the draft Code of Practice for Funeral Directors in Scotland) an appropriate ratio? If not, what is?
  - (c) Is it appropriate to require that each deceased must be stored individually in separate compartments within the unit (as proposed in the draft Code of Practice for Funeral Directors in Scotland)?
  - (d) Should training and/or education be mandatory? Please explain your answer. In the event that training and/or education was made mandatory, please comment on:
    - (i) Which members of staff require formal education and to what level (ie A Levels (or equivalent) or a degree or professional qualification) and to what extent can formal education be substituted by experience or other forms of training?

- (ii) Is it necessary to create a nationally accredited professional education programme or allow funeral directors to choose from the currently available qualifications?
  - (iii) Should there be a number of specified hours of training, and any other form of CPD, that staff should be required to complete each year, or should staff or their employers self-assess their professional development needs?
  - (iv) Are there any other requirements that should be imposed on staff, owners and controllers of funeral directors to ensure their technical and professional competence (eg age, conduct or experience restrictions)?
- (e) Is there a need to establish an independent ADR scheme and/or complaints adjudicator in addition to the funeral directors' own complaint handling and customer redress?
114. Who is best placed to monitor and enforce compliance with quality regulation?
- (a) Is a single UK-wide body or a different body in each part of the UK more appropriate, and how should either arrangement take account of the emerging regulatory regime in Scotland? Please explain your answer.
  - (b) What role, if any, should the existing trade associations (ie NAFD and SAIF) and other relevant organisations, such as the Good Funeral Guide, play in relation to the quality regulatory regime? Please explain your answer.
115. Should a licensing and inspection regime (see paragraphs 52 to 73) apply to individuals or businesses or both, and why? If both, what should be the respective obligations of individuals and businesses?
116. What considerations should be taken into account when designing any quality regulatory regime to enable providers of all sizes to comply with that regime, and without deterring innovation, entry and expansion?
- (a) What would be the likely costs of quality regulation to funeral directors? This includes the costs of implementing any changes necessary to comply with the regulation and the costs of demonstrating ongoing compliance with the regime.
  - (b) What would be the likely costs of implementing and running the regime and how should this be funded?

117. Are there any elements of quality that require immediate attention prior to the establishment of a quality regulatory regime?
118. Do you think we should tailor any aspects of quality regulation to reflect any differences in funeral service provision (and the current statutory regimes) across England, Wales, Northern Ireland and Scotland?
119. What information on the quality of services provided by funeral directors should be collected and disseminated to customers to enable them to assess and compare funeral directors?

## Appendix A: Existing quality standards and initiatives for funeral directors in the UK

1. This appendix covers both the general regulatory framework applicable to funeral directors and the various voluntary initiatives established within the funerals sector in the UK.

### General regulatory framework

2. Quality standards in the provision of funeral director services are not prescribed by law, and there is no statutory inspection regime for funeral directors' premises. There is, however, a broader regulatory framework relevant to the market.
3. Co-operative Group told us that there were a number of developing and existing regimes that the CMA could draw on for an appropriate regulatory framework. In addition to the introduction of a regulatory regime in Scotland (see Appendix B), the Co-operative Group referred to:
  - (a) the HTA,<sup>49</sup> which sets standards for public mortuaries (see paragraph 5); and
  - (b) the HSE,<sup>50</sup> which provides [guidance](#) on the management of the risks of infection on funeral premises (see paragraphs 6 to 15).<sup>51</sup> The Co-operative Group told us that the guidance was not mandatory, not proactively enforced and inconsistently applied.<sup>52</sup>

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<sup>49</sup> The HTA is a non-departmental public body of the Department of Health, which regulates organisations that remove, store and use human tissue for research, medical treatment, post-mortem examination, education and training, and display in public. In England, Wales and Northern Ireland, mortuaries where post-mortem examinations take place are licensed and inspected by the HTA.

<sup>50</sup> The HSE is a regulatory body established under the Health and Safety at Work etc. Act 1974 and is responsible for the encouragement, regulation and enforcement of workplace health, safety and welfare. Local authorities are responsible for enforcing the Health and Safety at Work etc. Act 1974 for 'the activities of an undertaker, except where the main activity is embalming or the making of coffins' (The Health and Safety (Enforcing Authority) Regulations 1998, r3(1) and Schedule 1(12)). The HSE provides direction to local authorities to ensure that there is a consistent and proportionate approach to health and safety enforcement. [redacted].

<sup>51</sup> For completeness, we also note that there are a number of other general HSE regulations or guidance which could be relevant to funeral director businesses, including but not limited to: [Blood-borne viruses in the workplace: Guidance for employers and employees](#) (HSE 2001); [Management of Hazard Group 4 viral haemorrhagic fevers and similar human infectious diseases of high consequence](#) (Advisory Committee on dangerous pathogens); [Advisory Committee on Dangerous Pathogens Protection against blood-borne infections in the workplace: HIV and Hepatitis](#) (HSE); and [Funeral arrangements after a CJD death: answers to some commonly asked questions; Manual handling at work](#).

<sup>52</sup> [Co-operative Group response to the Issues Statement](#), paragraph 5.4.

4. Funeral Partners identified broader legislative compliance, which included, but was not limited to:
- (a) compliance with pension requirements;
  - (b) paying minimum wage, holiday pay and adhering to the working time directive;
  - (c) property health and safety including asbestos, fire safety, electrical safety;
  - (d) handling pre-paid plans in accordance with legislation;
  - (e) data protection;
  - (f) anti-corruption;
  - (g) appropriate handling of clinical and commercial waste; and
  - (h) adherence with fleet management obligations.<sup>53</sup>

### ***Public mortuaries***

5. The HTA sets standards for public mortuaries in England, Wales and Northern Ireland through a licensing scheme. In order to obtain an HTA licence, an applicant must demonstrate that they and the relevant premises are suitable. The HTA will assess suitability against a number of core standards. The HTA's licensing standards are grouped under four headings:
- (a) Consent: mortuaries meeting the consent standards will be able to demonstrate that their processes for seeking and gaining consent comply with the Human Tissue Act 2004 and the HTA's codes of practice. Staff involved in seeking consent receive training and support in the essential requirements of taking consent.
  - (b) Governance and quality systems: mortuaries meeting these standards will be able to demonstrate that they have a suitable governance framework, underpinned by clear and controlled documentation, effective audit, staff training and organised record-keeping. In addition, they will have an effective system of risk management and suitable systems to deal with adverse events.
  - (c) Traceability: mortuaries meeting these standards will be able to demonstrate full traceability for the human material for which they are

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<sup>53</sup> Funeral Partners response to Issues Statement, page 7.



responsible, from receipt to final disposal/disposition. HTA inspectors will test this through traceability audits carried out on site and the HTA expects establishments to take a pro-active approach to assuring themselves of effective traceability throughout the lifetime of their licence. In addition, as the final traceability step, they will have established disposal arrangements which are in accordance with the HTA's Codes of Practice.

- (d) Premises, facilities and equipment: mortuaries meeting these standards will be able to demonstrate that their premises and facilities are appropriate for their licensed activities and are safe, secure and clean. In addition, establishments will have systems for on-going monitoring to ensure all key quality specifications are maintained. These standards also cover equipment, ensuring that it is appropriate, and suitably maintained, and that it does not present an impediment to the staff using it.<sup>54</sup>

### ***Health and safety***

6. The HSE provides non-mandatory [guidance](#) on managing the risks of infection when handling the deceased. It covers the safe handling, storage and examination of bodies and pathological specimens in hospitals, mortuaries and post-mortem rooms. It also provides guidance for those involved in funeral services (including embalmers) and exhumations of human remains. Although the guidance is focused on best practice to control the risk of infection for the purposes of protecting workers' safety, it nevertheless provides useful insights into the possible features of service quality that we may wish to include under the scope of quality regulation for funeral directors, specifically the collection and transport of the deceased and important considerations for funeral directors' premises.

### ***Collection and transport of the deceased***

7. The guidance offers standard infection control precautions for funeral service staff and other staff during delivery or removal of the deceased to and from the mortuary:
- (a) Never smoke, eat, chew, drink or do anything else that will bring your hands into contact with your mouth, eyes or nose.

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<sup>54</sup> [Code A: Guiding principles and the fundamental principle of consent](#), HTA, 3 April 2017, pages 30 and 31.

- (b) Make sure that any cuts or abrasions, particularly on your hands, are covered by a waterproof dressing. If there is any doubt about the effectiveness of the cover, obtain medical advice.
  - (c) Make sure single-use protective gloves and aprons are readily available and employees are trained as to when to wear and remove them.
  - (d) Make sure freshly prepared disinfectant solution, swabs and cloths are available and used.<sup>55</sup>
8. There are also guidelines on the appropriate presentation of the deceased.<sup>56</sup>

#### *Funeral directors' premises*

9. On managing the risks of infection in funeral premises, the guidance covers facility design, ventilation, body storage and embalming.

#### *Facility design*

10. The guidance advises that:
- (a) the size of the facility (including the body store and embalming room, where required) should be based on the storage requirements for bodies and the embalming anticipated to take place;
  - (b) floor surfaces should be constructed from hard-wearing, easily cleanable materials with impervious surfaces that are resistant to damage by chemical action, including disinfectants. They should not be slippery or uneven. Coved edges to floors make cleaning easier, and sloping towards drains and gullies helps drainage;
  - (c) all fittings and furniture, particularly embalming tables, should be constructed from hard-wearing, easily cleanable materials with impervious surfaces that are resistant to chemical damage;
  - (d) there should be a separate area for embalming where possible (sometimes referred to as an embalming theatre); and
  - (e) hands-free communication devices and wipe-clean, covered keyboards or tablets are recommended to avoid contamination.<sup>57</sup>

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<sup>55</sup> [Managing infection risks when handling the deceased. Guidance for the mortuary, post-mortem room and funeral premises, and during exhumation](#), HSE, page 25.

<sup>56</sup> [Managing infection risks when handling the deceased](#), pages 25 and 26.

<sup>57</sup> [Managing infection risks when handling the deceased](#), page 37.

### *Ventilation*

11. The guidance stresses the importance of adequate fresh airflow throughout the premises for odour control, including the provision of mechanical ventilation systems where necessary, and the need for local exhaust ventilation in areas where embalming is carried out, in order to control levels of exposure to embalming fluid.<sup>58</sup>

### *Body storage*

12. The guidance advises that:
  - (a) body storage capacity needs to be adequate to cope with public holiday periods and any other need for temporary increase in body numbers – this includes having contingency arrangements in place to transfer bodies to other suitable premises should storage capacity become a problem;
  - (b) storage compartments should be designed to be easily cleaned and maintained, and size should be considered to accommodate bariatric and paediatric bodies;
  - (c) funeral directors should minimise the handling of the deceased to control the risk of exposure by keeping the deceased cool and minimising the number of times the deceased are removed from cold storage (eg by implementing controlled viewing times where possible);<sup>59</sup> and
  - (d) if bodies are to be held for less than 48 hours, storage at 6°C or below is appropriate, and for longer-term storage, this should be at temperatures of approximately 4°C.<sup>60</sup>

### *Embalming*

13. The guidance advises that before embalming begins, staff should prepare the embalming room and equip it in accordance with safe working practices, ensuring that:

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<sup>58</sup> [Managing infection risks when handling the deceased](#), pages 37 and 38.

<sup>59</sup> The guidance advises that ideally, a refrigerated body store should be used for the purpose of limiting the rate of decomposition by slowing the growth of bacteria that contribute to the decomposition process. But the guidance recognises that a refrigerated body store may not be practicable in smaller premises where only a limited number of bodies are handled, and there are a number of other means by which cooling could be achieved (eg using cold tables or cool blankets; installing air chillers; using facilities at larger premises (if the site is a satellite premises); or making arrangements with local hospitals to delay collection, where possible). ([Managing infection risks when handling the deceased](#), pages 38 and 39).

<sup>60</sup> [Managing infection risks when handling the deceased](#), page 38.

- (a) an adequate supply of personal protective equipment (PPE) is available;
  - (b) heavy-duty rubber gloves and aprons are readily available (if required);
  - (c) air supply and extraction systems are working properly;
  - (d) drains are clear, have been cleaned and the water supply is working;
  - (e) there is an adequate supply of soap, freshly prepared embalming fluids, disinfectants, detergent solutions and paper towels; and
  - (f) tools and equipment required during embalming are properly maintained, clean and ready for use, and set out as required.<sup>61</sup>
14. The guidance sets out standard infection control precautions for embalming procedures:
- (a) Once used instruments are no longer required, clean them thoroughly in detergent solution.
  - (b) Never attempt to catch a falling instrument. To help prevent accidental falls, do not lay instruments down indiscriminately after use.
  - (c) Wherever possible, minimise operations likely to cause splashing or generate aerosols, such as washing down with high-pressure hoses and cleaning instruments under running water.
  - (d) If a sluice is included in the room, it should be fitted with a suitable cover to prevent aerosolising of fluids when flushed.
  - (e) Follow specified cleaning and disinfection procedures for decontamination of work, floor and wall surfaces and of equipment, including use of PPE, where appropriate.<sup>62</sup>
15.                      must                      requires employers to control substances that are hazardous to health by:
- (a) finding out what the health hazards are;
  - (b) deciding how to prevent harm to health;
  - (c) providing control measures to reduce harm to health;

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<sup>61</sup> [Managing infection risks when handling the deceased](#), page 41.

<sup>62</sup> [Managing infection risks when handling the deceased](#), page 41.

- (d) making sure the control measures are used;
- (e) keeping all control measures in good working order;
- (f) providing information, instruction and training for employees and others;
- (g) providing monitoring and health surveillance in appropriate cases; and
- (h) planning for emergencies.<sup>63</sup>

## Voluntary initiatives

### *Trade associations*

16. There is no obligation for a funeral director to belong to any trade association in the UK. However, many funeral directors are members of one or more trade associations, voluntarily agreeing to abide by their codes of practice which set certain conduct and service requirements.
17. There are two main trade associations representing funeral directors: NAFD and SAIF. Both set standards of service through their codes of practice, carry out inspections of their members' premises and provide practical guidance and access to training and qualifications. Based on the overall numbers of funeral directors and branches in the UK estimated in a funeral director's internal document, we estimate that between them, their membership represents just over 75% of funeral director branches.<sup>64</sup>
18. The NAFD and SAIF codes of practice have several common requirements. Common elements include requirements relating to: professional conduct; provision of training to staff; transparency of information (including ultimate ownership details; availability of price lists on premises and in the home); marketing of services; complaints and redress. The codes of practice differ in certain respects. For example, SAIF's Code of Practice requires that members must explain their full range of services that are relevant to the client, including the availability of a simple funeral, before giving them a written estimate. NAFD dropped the requirement for a simple funeral to be offered by its members from its Code of Practice in 2014.
19. NAFD and SAIF monitor compliance with the codes of practice and carry out inspections of their members' premises:

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<sup>63</sup> [COSHH basics](#), HSE.

<sup>64</sup> [Funerals market study](#), paragraph 2.50.

- (a) Compliance with the NAFD Code of Practice, which covers service standards, is monitored by Standards and Quality Managers. The Standards and Quality Managers also inspect member firms under the NAFD's Code of Professional Standards, which was introduced in 2014 and covers 'back of house' standards and the operational issues in running a funeral home.
  - (b) SAIF requires member firms' individual offices to be visited and inspected to check for compliance with SAIF's Code of Practice. SAIF's Code of Practice also sets out certain requirements in relation to premises, vehicles and equipment.
- 20. Please refer to our working paper on the quality of back of house funeral director services, for further information on NAFD and SAIF inspections.
- 21. Both codes of practice require member firms to have a formal written complaints procedure in place. People who are dissatisfied with a response to a complaint from a member firm have access to conciliation and arbitration which is independent to the trade associations.
- 22. NAFD and SAIF may enforce a range of sanctions on members, including suspension of membership and expulsion.
- 23. Both associations require training to be provided to staff, and this is assessed as part of the NAFD and SAIF's inspection programmes. NAFD advised us that it actively promotes and encourages best practice by offering training benchmarked to national qualification standards.<sup>65</sup> SAIF pursues education and support through The Independent Funeral Directors College.<sup>66</sup>

## *NAFD*

- 24. NAFD's Code of Practice includes, by way of summary, the following service standards (but this is not an exhaustive list):
  - (a) General: members should act in a courteous, sensitive and professional manner. This includes not pressurising clients and respecting the dignity of the deceased at all times.

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<sup>65</sup> Diploma in Funeral Arranging and Administration and Diploma in Funeral Directing, endorsed by Birmingham City University.

<sup>66</sup> Units of the IFD training include Foundation Funeral Practitioner, Funeral Operative and Funeral Administrator leading to an NVQ Level 3 Certificate in Funeral Practice from ONE awards.

- (b) Marketing and advertising: all marketing and advertising must comply with all requirements of the Advertising Standards Authority and any other relevant legislation.
- (c) Dealings with clients: members must comply with the relevant customer protection legislation and provide clients with full and detailed information, including prices, on the range of funeral services available.
- (d) Information to be made available: members should list itemised charges and descriptions of the constituent elements of their services on their price lists.
- (e) Estimates and confirmations: members should provide a written confirmation of the funeral arrangements and a written itemised estimate of all funeral charges consistent with the price list.
- (f) Final accounts: members should provide the client with a detailed itemised final account that is comparable with the estimate provided.
- (g) Publicity: members should display the logos of NAFD and the Funeral Arbitration Scheme<sup>67</sup> and a current NAFD Membership Inspection Certificate at their premises.
- (h) Monitoring: NAFD publishes an annual report on members' compliance with the Code of Practice.
- (i) Professional conduct: members should provide employees with training.<sup>68</sup>
- (j) Complaints: members should appoint a designated senior person to deal with complaints from clients and have a formal written procedure for handling such complaints. Members must also comply with a client's wishes to proceed to conciliation or arbitration under the Funeral Arbitration Scheme.

## SAIF

25. SAIF's Code of Practice includes, by way of summary the following service standards (again, this is not an exhaustive list):

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<sup>67</sup> The [Funeral Arbitration Scheme](#) is an independent conciliation and arbitration scheme designed to resolve complaints from clients relating to NAFD member funeral firms.

<sup>68</sup> NAFD offers training benchmarked to national qualification standards – a Diploma in Funeral Arranging and Administration and a Diploma in Funeral Directing, endorsed by Birmingham City University.

- (a) General: members must conduct themselves in a totally professional manner and behave sensitively, with courtesy and complete dignity at all times.
- (b) Marketing of funeral and associated services: all advertising and promotional activities must comply with the British Code of Advertising Practice, the British Code of Sales Promotion Practice, Ofcom and any other relevant codes or legislation.
- (c) Communication on funeral matters relevant to third parties: members should communicate and co-operate with the relevant authorities, institutions, professions and voluntary organisations so they themselves can advise their own contacts/clients or patients on funeral matters.
- (d) Information and choice: members will provide a choice of at least four coffins at varying prices, one of which will be an inexpensive and plain type, and members must explain their full range of services to clients, including the availability of a simple funeral, before giving them a written estimate.
- (e) Prices and price lists: prices must be fair and reasonable and price lists must be prominently displayed and made available to clients.
- (f) Provision of estimates and invoices: clients must be provided with a detailed written and itemised estimate and a fully itemised invoice, which should mirror the estimate.
- (g) Premises: members must fully comply with all health and safety regulations, related legislation and codes of practice and shall display the appropriate certificates as required by law.
- (h) Vehicles and equipment: all vehicles must comply with all relevant legislation and be maintained and presented to the highest practical standards at all times, and all equipment associated with the preparation and provision of funeral services must be properly maintained to the standards specified by the manufacturer and/or supplier.
- (i) Other services: members shall ensure that any agents and sub-contractors are bound by all the relevant provisions of the Code while providing such services for the member's clients.



- (j) Employees: members shall properly train all staff.<sup>69</sup>
- (k) Complaints and their redress: Members must have an internal written complaint procedure formally in place and all recommendations and decisions relating to complaints must be approved and sanctioned by a director or senior manager.

## **FSCSR**

26. In November 2018, the FSCSR was established to seek:

- (a) an industry-wide consensus around how to improve customer outcomes in the funeral directing sector, specifically:
  - (i) developing a blueprint for what higher standards look like, and what frameworks are required to enforce or underpin these standards, including an agreement on what an enhanced code of practice should look like, what regulation to enforce this should look like, including consideration of licensing and inspection, and how this would be implemented/underpinned (ie statutory or enhanced self-regulation); and
  - (ii) developing a proposal for how customers can more effectively compare the quality and provision of a funeral director's services, and what frameworks are required to implement and enforce this; and
- (b) industry agreement to promote the agreed blueprints for improving standards in the sector, and to make the case to industry and policymakers to support and implement this vision.<sup>70</sup>

27. The proposed structure of the FSCSR includes:

- (a) an independent chair to provide high level oversight of the process. Lewis Shand Smith, former Chief Executive and Chief Ombudsman of Ombudsman Services – the Energy and Communications Ombudsman, was appointed Chair in January 2019;
- (b) working groups to develop detailed policy proposals on the two key workstreams outlined in paragraph 26; and

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<sup>69</sup> SAIF pursues education and support through the Independent Funeral Directors College. Units of the Independent Funeral Directors College training include Foundation Funeral Practitioner, Funeral Operative and Funeral Administrator leading to an NVQ Level 3 Certificate in Funeral Practice from ONE awards.

<sup>70</sup> Please refer to the FSCSR [website](#) for further information.

- (c) an independent secretariat to support the activity of the working groups and provide administrative and drafting support.
28. The FSCSR is comprised of the two trade associations representing funeral directors, some large and independent funeral directors, charities/bereavement groups and customer facing organisations.
29. In November 2019, the FSCSR published for consultation a draft [Code of Practice for funeral directors](#). The Code contains two mandatory provisions, the Code Principles and the Outcomes, and non-mandatory indicative behaviours.
30. The Code Principles define the fundamental ethical and professional standards expected of funeral directors when providing funeral services. In order to comply with the Code, funeral directors must:
- (a) act in the best interests of each client, prospective client and customer;
  - (b) provide the best possible level of care to the bereaved, keeping in mind the specific needs of each client and family;
  - (c) respect and maintain the dignity of deceased people in their care at all times;
  - (d) act with honesty and integrity;
  - (e) provide clients with full and fair information about services, products and associated costs;
  - (f) behave in a way that promotes and maintains public trust in their business, the funeral directing profession and related industries;
  - (g) comply with all legal and regulatory obligations and deal with their regulators in an open, timely and cooperative manner;
  - (h) run their business effectively and in accordance with proper governance and sound risk management principles;
  - (i) run their business in a way that encourages equality of opportunity and respect for diversity; and
  - (j) run their business in a way that encourages a culture that values and welcomes complaints as a way of putting things right and improving service.

31. The Outcomes describe what funeral directors are expected to achieve in order to comply with the Code. The Code lists a number of Outcomes for the following parts of the Code:
- (a) Part 1: Caring for your clients.
  - (b) Part 2: Your operational facilities.
  - (c) Part 3: Caring for deceased people.
  - (d) Part 4: Management of your business.
  - (e) Part 5: Publicity and the ethical procurement of business.
  - (f) Part 6: Training and professional development.
  - (g) Part 7: Equality and diversity.
  - (h) Part 8: Confidentiality and data protection.
  - (i) Part 9: Complaint handling.
  - (j) Part 10: Working with your regulators.
32. The Outcomes are supported by Indicative Behaviours, which specify, but do not constitute an exhaustive list of, the kind of behaviour which may establish compliance with, or contravention of, the Code Principles.

### ***Good Funeral Guide***

33. The Good Funeral Guide is a not-for-profit social enterprise company dedicated to supporting, empowering and representing the interests of dying and bereaved people living in the UK. It operates an accreditation scheme for funeral directors and undertakes visits to firms that it reviews and recommends on its website. It lists around 175 branches of the companies that have chosen to seek accreditation.
34. In determining whether a funeral director meets its accreditation criteria, the Good Funeral Guide appraises the following aspects of the funeral director's service offering:
- (a) Core values.
  - (b) Staff (recruitment, training, motivation, reward, retaining, developing, letting go, deputising, succession planning).
  - (c) Embracing customer cultural diversity.

- (d) Continuity of care.
- (e) Hours of business and availability.
- (f) Arrangement process.
- (g) Pricing.
- (h) Products and services.
- (i) Collection and care of the deceased.
- (j) Premises (reception, waiting room, arranging room, chapel of rest, ceremony room, mortuary facilities, kitchen, signage, window display and external appearance).
- (k) Vehicles.
- (l) Parking facilities and public transport links.
- (m) Disability support.
- (n) Kid friendliness.
- (o) Resources for clients.
- (p) Follow-up involvement and support.
- (q) Community engagement.
- (r) Funeral plans.
- (s) Marketing materials.
- (t) Website.
- (u) Client enquiry response.
- (v) Social media.
- (w) On the day (delivering the right send-off).
- (x) Removals.
- (y) Environmental policy.

## ***Fair Funerals Pledge***

35. The Fair Funerals Campaign is run by anti-poverty charity, [Quaker Social Action](#) (QSA). As part of its initiative to address funeral poverty, Quaker Social Action encourages funeral directors to sign up to the [Fair Funerals Pledge](#), thereby committing to help people find funerals that are within their means, and to be transparent about their most affordable options. QSA estimates that over one third of the UK funeral industry is signed up to the pledge.<sup>71</sup>

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<sup>71</sup> See <https://fairfuneralscampaign.org.uk/content/fair-funerals-pledge>.

## Appendix B: Regulation of the funerals sector in Scotland

### Introduction

1. Funeral services, including cremation and funeral director services, are a devolved matter in Scotland (as they are in Northern Ireland and Wales),<sup>72</sup> and the Scottish Government is introducing a new regulatory regime for these services through the 2016 Act. In its 2015 Policy Memorandum to the Burial and Cremation (Scotland) Bill (the 2016 Bill), the Scottish Government stated that regulation of the funeral industry would address current concerns that there are few formal requirements to operate as a funeral director and that there is little independent scrutiny of funeral directors.<sup>73</sup>
2. Many of the provisions in the 2016 Act arose from recommendations made, in particular, by two review groups:
  - (a) In 2008, the Burial and Cremation Review Group recommended 'that all current primary and secondary legislation be repealed and consolidated into a single Act covering burial, cremation and other forms of disposal'.<sup>74</sup>
  - (b) In 2014, the Infant Cremation Commission (ICC), established following complaints about cremation practices in relation to infants, babies and stillborn and non-viable babies at Mortonhall Crematorium in Edinburgh, reported that the practice of burying baby ashes in secret at Mortonhall had gone on for more than 40 years. The ICC also found that 'it was not known for sure what remains of which babies were interred in an unmarked "garden of remembrance" at Mortonhall due to a "longstanding and wholesale failure" to keep accurate records', and that 'some parents face never knowing for sure where the ashes of their baby were laid to rest'. The ICC recommended that 'there should be "robust systems of audit and inspection" to ensure safe working practices and "quality of service" to bereaved families'.<sup>75</sup>
3. The 2016 Act is not yet fully in force, but of particular relevance to our market investigation are:

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<sup>72</sup> That is to say, they are not a reserved matter pursuant to Schedule 5 to the Scotland Act 1998.

<sup>73</sup> [Burial and Cremation \(Scotland\) Bill – Policy Memorandum](#), 2015.

<sup>74</sup> [Burial and Cremation Review Group: Report and Recommendations](#), March 2008, paragraph 9.

<sup>75</sup> See [Report of the Infant Cremation Commission](#), 17 June 2014.

- (a) Part 2 (Cremation), which includes provision on fees for cremation and other services and gives power to Scottish Ministers to make a mandatory code of practice for cremation authorities;
  - (b) Part 4 (Inspection), which provides for the appointment of inspectors of burial, of cremation and of funeral directors;
  - (c) Part 5 (Funeral Directors), which provides for the licensing of funeral directors and allows Scottish Ministers to issue a mandatory code of practice about the carrying out of a funeral director's functions; and
  - (d) Part 6, which includes a power for Scottish Ministers to publish guidance on the costs associated with making arrangements for a funeral.
4. The Scottish Government has also committed to a number of actions to address funeral poverty, as set out in its Funeral Costs Plan. This includes the publication of guidance on funeral costs, which sets out good practice in relation to funeral directors' pricing, amongst other matters. The guidance was published on 16 May 2019 and was established in co-operation with the funeral industry rather than being introduced through legislation.
5. This appendix is set out as follows:
- (a) Background to regulatory reform in Scotland.
  - (b) The 2016 Act.
  - (c) Cremation (Part 2).
  - (d) Inspections (Part 4).
  - (e) Funeral Directors (Part 5).
  - (f) Recent developments.

## **Background**

6. As a result of recommendations from the Mortonhall Investigation Report (into the disposal of ashes at Mortonhall Crematorium) and the subsequent ICC Report, the 2016 Bill was introduced in the Scottish Parliament on 8 October 2015. Further detail on these reports is set out in Annex A.
7. The background to the introduction of legislation is reflected in the reports of the ICC. The ICC, established in April 2013 and led by Rt Hon Lord Bonomy, was charged with examining the policies, practice and legislation related to the cremation of infants in Scotland. The ICC published its report in June

2014, setting out 64 recommendations to improve the processes in place when cremating infants in Scotland.

8. The ICC report was concerned with the cremation of babies, stillborn and non-viable babies. It stated that ‘two important legislative changes proposed are that there should be a statutory definition of “ashes” and statutory regulation of the cremation of babies of less than 24 weeks’ gestation. Since the Commission have identified a widespread lack of appreciation of the impact of the cremation process on babies and infants and a failure to appreciate what the public expectation of cremation is, the subsequent sections deal with training, education and communication’.
9. Recommendation 63 of the ICC’s report was for the appointment of an Inspector of Funeral Directors and recommendation 64 referred to regulation of the funeral industry: that Scottish Ministers should consider regulation of funeral and crematoria industries and keep both industries under review.<sup>76</sup>
10. Separately, the National Cremation Investigation (NCI)<sup>77</sup> published its report in June 2016 and set out 15 general conclusions and recommendations. Although the focus of the investigation was ‘to investigate the circumstances around the cremation of any infant or baby referred to the Investigation team by bereaved parents’, its terms of reference extended to conducting ‘a more general investigation into practices and operations at any specific crematorium where case-specific investigations give rise to more general concerns’.
11. While the NCI was focussed on the cremation of infants and babies, its recommendations also related to the overall regulation of the funeral industry as reflected below:
  - (a) Recommendation 3: the overall regulation of the funeral profession needs to be improved. Funeral directors as well as cremation authorities should be licensed and subject to a statutory regime of regulation and inspection.
  - (b) Recommendation 4: the Scottish Government should exercise its powers under the 2016 Act to regulate the Funeral Directing Profession.
  - (c) Recommendation 5: an Inspectorate of the funeral industry should be appointed incorporating the current role of the Inspector of Cremation.

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<sup>76</sup> [Report of the Infant Cremation Commission](#), June 2014, section 2.64.

<sup>77</sup> Set up in 2014 following the Mortonhall crematorium investigation to investigate the circumstances surrounding historic infant cremation practices, the NCI considered over 200 cases across fourteen crematoria. 320 witnesses were interviewed. The report covers areas such as management, training, cremation processes and equipment, administration and communication at each of the 14 crematoria.



## The 2016 Act

12. The 2016 Act is an Act of the Scottish Parliament, which received Royal Assent in April 2016. It replaced the law on burials in Scotland, as was set out in the Burial Grounds (Scotland) Act 1855, and the law on cremations in Scotland, as was set out in the Cremation Acts 1902 and 1952 (as modified to apply to Scotland) and various sets of regulations. The 2016 Act is being brought into force in stages, as explained in more detail below. As at 4 April 2019, (when the 3<sup>rd</sup> Commencement Order had effect) about half of the 2016 Act is in force.<sup>78</sup>
13. The 2016 Act is in seven parts:
  - (a) Part 1 Burial.
  - (b) Part 2 Cremation.
  - (c) Part 3 Arrangements.
  - (d) Part 4 Inspection.
  - (e) Part 5 Funeral Directors.
  - (f) Part 6 Miscellaneous
  - (g) Part 7 General.
14. The areas covered by the 2016 Act are:
  - (a) power to make regulations concerning the duties of a cremation authority, applications, fees and registers;<sup>79</sup>
  - (b) who may instruct the disposal of human remains;
  - (c) Inspectors and inspection, as well as the power for Scottish Ministers to introduce licensing of funeral directors;
  - (d) the suspension of burial and cremation legislation in response to public health risks (eg pandemics);

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<sup>78</sup> Part 1 (Burials) in part: - sections 1-7 (Burials grounds); sections 17 and 20 (Register and fees for burials); Part 2 (Cremation): sections 45-60, 63; Part 3 (Arrangements) – sections 65-68 (Adults and Children); sections 69-85 (Pregnancy losses); sections 87-88 (Local authority functions); Part 4 (Inspection) in part: - sections 89 (appointment of inspectors) and 93 (reports); Part 5 (Funeral Directors) not in force; Part 6 (Miscellaneous) sections 98 – 101; Part 7 (General) sections 102-113 other than section 102 (Information and registers to be kept in electronic form) and section 105; Schedule 1 (Amendments); and Schedule 2 (Repeals).

<sup>79</sup> Pregnancy loss is included in each of these processes.

- (e) methods for disposing of human remains which may be introduced in the future;
- (f) the ability of Scottish Ministers to issue codes of practice covering various parts of the funeral industry; and
- (g) a statutory definition of ashes.<sup>80</sup>

## **Cremation**

- 15. Part 2 of the 2016 Act updates and replaces the existing legislation relating to cremation in Scotland. As from 4 April 2019, the Cremation Act 1902 and the Cremation Act 1952 are repealed. From this date, a local authority in Scotland has the power (but not a duty) to provide a crematorium, or to arrange with another person to provide a crematorium.
- 16. Section 45 defines 'cremation' to include not merely the burning of human remains, but other processes, such as the use of a cremulator and cooling, which are required to ensure that the human remains are reduced to ashes.

## **Regulations**

- 17. As from 4 April 2019, the Cremation (Scotland) Regulations 2019, made under Section 47 of the 2016 Act, make provision for the management and operation of crematoria; the maintenance of crematoria; the operation of any equipment; and persons employed by cremation authorities (including in relation to training, qualifications and membership of professional bodies).

## **Ashes**

- 18. Sections 51 to 56 of the 2016 Act set out duties in relation to the collection and handling of ashes.

## **New crematoria**

- 19. Section 59 requires a person proposing to establish a new crematorium to give notice of at least three months to an Inspector of Cremation and must not determine applications for cremation from customers prior to the day specified by the Inspector.

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<sup>80</sup> [Report of the National Cremation Investigation](#), 17 June 2016, page 13.

## *Fees*

20. Section 63 allows a cremation authority which is a local authority to charge 'such fees as it thinks fit' in respect of a cremation and any other services it provides in relation to cremation. A cremation authority which is a local authority must publish its fees in paper form and on its website. It may also publish its fees in any other place it considers appropriate.

## *Code of practice*

21. Section 64 provides that a cremation authority (whether local authority or private) must comply with any new or revised code of practice issued by Scottish Ministers in relation to the management of a crematorium. Scottish Ministers must consult before issuing such a code of practice and it must be approved by a resolution of the Scottish Parliament. The code of practice must be published and kept under review by Scottish Ministers.

## **Inspections**

22. Part 4 of the 2016 Act sets out a range of provisions which will apply in relation to the inspection of various parts of the funeral industry, including funeral directors, crematoria and cremation authorities.<sup>81</sup> In its Policy Memorandum to the 2016 Bill, the Scottish Government said that it expected that the introduction of inspectors would improve standards where necessary, address bad practice and improve public confidence in the funeral industry as a whole.
23. In 2017, the Scottish Government consulted on high level proposals on the content of draft inspection regulations under the 2016 Act. Together with the Code of Practice for Funeral Directors, these will underpin the inspection regime. Amongst other matters, the regulations will set out the powers and duties of inspectors in relation to funeral directors, burial and cremation authorities, and cover enforcement of the regulations. The Scottish Government has been conducting a business and regulatory impact assessment.
24. The [consultation paper](#) to the 2016 Bill explained that the ICC recommended the appointment of an independent inspector of crematoria and that there was provision in current legislation which would allow that. However, in view of the

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<sup>81</sup> In July 2017, the Scottish Government issued a consultation containing high level proposals on the content of Inspection Regulations. Once finalised, the Regulations will set out the powers and duties of inspectors in relation to funeral directors, burial and cremation authorities. Work has begun on a Business and Regulatory Impact Assessment for the regulations.

lack of detail in current legislation at the time, it was proposed to bring forward new legislation to enable Scottish Ministers to appoint an Inspector of Cremation and set out the extent of the role and its powers.

25. Section 89 (currently in force) provides for Scottish Ministers to appoint inspectors of burial, inspectors of cremation and inspectors of funeral directors.

### ***Inspector of Crematoria***

26. In March 2015, Robert Swanson was appointed as the Inspector of Crematoria to fulfil the 63<sup>rd</sup> recommendation of the ICC's report.<sup>82</sup>
27. Since his appointment, the Inspector of Crematoria has inspected each of Scotland's 30 crematoria and has met with a number of stakeholders representing, amongst others, the NHS, local authorities, the medical profession and Scottish Government groups.
28. In July 2019, he published his third annual report, covering the period 1 April 2018 to 31 March 2019. In his third annual report, the Inspector of Crematoria noted that during the period of the report:
  - (a) the overall findings from the inspections was very positive with noted improvement to facilities for attendees and staff at a number of crematoria;
  - (b) there was 100% recovery of ashes from all crematoria in Scotland; and
  - (c) collectively, crematoria in Scotland are considered to be adequately staffed and equipped to deal with any seasonal increase or significant numbers of mass fatalities from major incidents or pandemics.<sup>83</sup>

### ***Inspector of Funeral Directors***

29. In July 2017, Natalie McKail was appointed as the Inspector of Funeral Directors. She published her first annual report on 31 August 2018.
30. The Inspector of Funeral Director's inspection approach focussed on five key areas:

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<sup>82</sup> Robert Swanson's appointment was under the Cremation (Scotland) Regulations 1935, as this was before the 2016 Act had been passed. On 4 April 2019, Robert Swanson was appointed as the Inspector of Cremation under Section 89(b) of the 2016 Act

<sup>83</sup> [Inspector of Crematoria: annual report 2018-2019](#), July 2019.

- (a) Culture, ethos and confidence in management, including an understanding of the business model (direct service provision, contract arrangements, informal support or business partnering arrangements – coffin supplier, conveyancing, care of deceased including embalming, carriage of families or deceased to funeral), investment strategy, governance and leadership arrangements, training and expertise, trade membership, internal audits, customer feedback and improvement appetite.
- (b) Conveyance and care of the deceased – staffing model, so who does what and has what responsibility for care, logistical arrangements for carriage and care, identification practices, training and experience of staff, practices, premises and capacity for storage and care of the deceased. Suitability of equipment and vehicles – clean and well maintained.
- (c) Understanding, recording and acting on the wishes of the deceased or bereaved both pre-need and at need – provision of advice and support and a clear description of choices for funeral arrangements, estimates and invoicing as to services provided, record keeping for wishes and services that have been agreed, and authorisations sought and granted in relation to ashes, memorialisation, and care of the deceased (embalming). Time to consider and change mind built in, with actions flowing from instructions.
- (d) Asset management – full premises audit and inspection of all buildings used in the care of the deceased or storage of items relating to the business, including designated and restricted areas for the care of the deceased, provision and maintenance of suitable and sufficient equipment and vehicles which are clean, well maintained and regularly inspected, suitably trained and experienced staff across the range of duties.
- (e) Audit of procedures, practice and record keeping – identification and collection of the deceased, recording of funeral arrangements, care of the deceased including record of authorisations and permissions, delivery of funeral according to wishes and contract, complaints and feedback informing continuous improvement, ashes retention according to permissions, storage and management, ashes release, completion of records, record storage and management and overall risk management and business continuity.<sup>84</sup>

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<sup>84</sup> [Inspector of Funeral Directors: annual report 2017-2018](#), 31 August 2018, page 6.

31. In her annual first report, the Inspector of Funeral Directors noted that there were a few ongoing and outstanding complaints, such as the impact to care of the deceased of bad weather, misidentification of the deceased and care of the deceased.<sup>85</sup>
32. The Inspector of Funeral Directors' appointment came to an end on 30 June 2019 and the Scottish Government is in the process of scoping out the roles and responsibilities for a new Inspector.

## **Funeral Directors**

33. Part 5 of the 2016 Act (not yet in force) concerns funeral directors and will give Scottish Ministers power to issue a statutory Code of Practice on the carrying out of a funeral director's functions.
34. In the Consultation paper to the 2016 Bill, Ministers made the following key points about general principles around regulation and licensing of the funeral industry:

Requiring those acting as funeral directors to be licensed would establish consistent minimum standards of training across the industry. Such a system could be supported by an inspector, and a range of sanctions – including the suspension or removal of a funeral director's licence to practice – could be introduced in response to poor performance or failure to meet standards. A licensing regime could also be used to help support sound businesses by placing particular financial requirements on those applying for a licence.

[...]

While this would bring benefits, it would also be a large and costly process, both to establish and run. There are a number of other regulatory models which could provide assurance about industry standards and practice. As a minimum, the funeral industry could be required to be self-regulating. This would be similar to the existing model, but the Scottish Government could provide clear guidance on what was expected of funeral directors. This would also require some system of sanction if any funeral director did

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<sup>85</sup> [Inspector of Funeral Directors: annual report 2017-2018](#), page 4.

not meet guidance standards, and it is not clear what sanctions could exist in a system of self-regulation.<sup>86</sup>

35. When the 2016 Bill was being debated in February 2016 the Minister for Public Health, Maureen Watt, noted that there was not enough evidence to say with certainty that licensing was required or what form a scheme would take. Further, she stated that while they had heard accounts of poor practice by funerals directors, she believed most companies provided a good service and that she was keen to improve standards in the industry.<sup>87</sup>
36. She stated her intention to use inspectors appointed under the 2016 Bill to review the industry and make recommendations to Scottish Ministers on the need for licensing, stating it was her belief that this was the way to ensure an effective licensing scheme which would support consistent high standards across the industry.

## Recent developments

### *Code of Practice*

37. In June 2019, the Scottish Government published for formal consultation a draft statutory Code of Practice for Funeral Directors.<sup>88</sup> When it comes into force, the Code will set standards and be used as the basis for conducting inspections and making enforcement decisions. Similar codes of practice will be developed for cremation and burial authorities.
38. The Code is organised into the following sections:
  - (a) Engagement of the funeral director and transfer of the deceased.
  - (b) Care of the deceased and the premises used by the funeral director.
  - (c) Planning of the funeral service according to the wishes of the deceased and the bereaved persons.
  - (d) Delivery of the funeral.
  - (e) Complaints.

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<sup>86</sup> [Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland](#), January 2015, pages 187 and 188.

<sup>87</sup> [Meeting of the Parliament, Official Report](#), 11 February 2016, page 87.

<sup>88</sup> The Code will apply to all funeral directors who carry out the activities of a funeral director in Scotland regardless of where their business is based. The consultation closed on 20 September 2019.

- (f) Business continuity and managing risks.
39. The consultation specifically focuses on the following areas relating to the quality of service provided by funeral directors:
- (a) The Code proposes that care of the deceased must take place in a location specifically designed for that purpose and that the funeral director's business must ensure that the care facility or mortuary is fit for that purpose. This requirement will likely formalise existing processes by making funeral directors check that their care facilities and mortuaries are indeed fit for purpose, and by doing so will help to improve the consistency of care facilities and mortuaries across Scotland over time.
  - (b) The Scottish Government is of the view that the use of refrigeration units, or other purpose-built cold rooms, is good practice in the care and preservation of deceased persons. The Code proposes for every 50 deceased persons taken into the care of the funeral director on average per year, the funeral director will be required to have, or to have access to, one refrigeration space. The Code does not make it a requirement for funeral directors to have refrigeration – it states that where a business does not provide its own refrigeration, a formal written and managed Service Level Agreement (SLA) with another provider of refrigeration should be in place.
  - (c) The Scottish Government considers that offering viewing of the deceased as a service is integral to good care practices. The Code reflects this view and proposes that the funeral director must be able to offer or facilitate viewing of the deceased as a service and provide or have access to an appropriate and dedicated viewing space. The Code also acknowledges that there are circumstances where viewing of the deceased would not be recommended by the funeral director (eg where the deceased person is in a poor physical condition).
  - (d) The Scottish Government believes that funeral directors, funeral arrangers or administrators and funeral service operatives, assistants, drivers or bearers, as well as embalmers,<sup>89</sup> should have access to accredited training or qualifications and should also be required to complete ongoing Continuous Professional Development (CPD) to stay up to date on industry or profession best practices. Currently, the infrastructure is not yet in place to deliver widespread accredited training and qualifications and therefore, training and qualifications have not been

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<sup>89</sup> The BIE currently offers a two-year embalming training course.



included in the Code. The Scottish government notes that accredited training and qualifications are commonly found in the funeral industries of many other developed countries.

- (e) The Code sets out two events/reportable incidents that should be reported to inspectors within 48 hours. These are damage to ashes and complaints about the care of deceased persons.

40. The consultation closed on 20 September 2019.

### ***Licensing***

- 41. In August 2019, the Inspector of Funeral Directors recommended to the Scottish Government to introduce and launch a scheme of progressive licensing for funeral directors in Scotland by December 2020 to provide reassurance to the bereaved in Scotland and to ensure good standards of care for the deceased and support for the bereaved.<sup>90</sup>
- 42. The Inspector recommended that the scheme should be business (including all locations) and activity focused initially, but that the Scottish Government may want to review the value of individual licences and conditions of licence, such as mandatory training requirements, in the future (following an evaluation of the initial licensing scheme). In other licensing models, a business and activity-based licence is linked to an accountable person – that person may be required to provide evidence of suitability of professional competence through proven experience or formally required qualifications, designated business management accountabilities, or no criminal or corporate concerns.
- 43. The Inspector recommended that the Scottish Government may wish to consider a licensing authority set within the oversight, governance, controls and indemnity of the Scottish Government.
- 44. The Inspector recommended that the Scottish Government should consider setting up a publicly accessible register of licensed funeral directors, in order to inform the public and for the bereaved to make choices which are appropriate for them and their loved ones. This would have a dual role in highlighting those legitimate businesses which were subject to formal and independent inspection and enforcement, but also could be a source to cross

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<sup>90</sup> See <https://www.gov.scot/publications/report-scottish-ministers-introduction-regulatory-model-including-progressive-licensing-scheme-funeral-directors-scotland/pages/1/>.

reference where services are being provided which are not licensed, therefore allowing appropriate action to be taken.

45. On 23 August 2019, Joe FitzPatrick, Scottish Government Minister for Public Health, Sport and Wellbeing, accepted the recommendation to develop a licensing scheme for funeral directors' businesses.

### ***Annex A: Background to the development of a regulatory regime for the funerals sector in Scotland***

#### *Burial and Cremation Review Group*

1. The independent Burial and Cremation Review Group was created in 2005. The Group was chaired by Sheriff Brodie and met between 2005 and 2007 to review the law relating to burial, cremation and death certification.

#### *Mortonhall Report*

2. In 2012, Stillbirth and Neonatal Death Society Lothians (Sands Lothians) engaged Lesley Winton, a freelance writer, to write a book explaining its work as a charity and to share experiences of bereaved parents. Winton's findings included noting that Mortonhall Crematorium had disposed of ashes 'in a mass unmarked grave'.<sup>91</sup>
3. On 22 January 2013, the City of Edinburgh Council announced the appointment of Rt Hon Dame Elish Angiolini DBE QC to undertake an independent investigation into the historical practices at Mortonhall Crematorium. The Mortonhall Report was published in April 2014. The Mortonhall Report referred many of its recommendations to the ICC for wider national investigation.<sup>92</sup>

#### *Rosendale Report*

4. In December 2012, the City of Edinburgh Council apologised to families affected by historical practices at Mortonhall Crematorium and announced an investigation, led by Mike Rosendale. The key recommendation from the Rosendale Report was for an independent person to be appointed to continue investigating historical practices at the Mortonhall Crematorium.<sup>93</sup>

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<sup>91</sup> Edinburgh Evening News, 5 December 2012.

<sup>92</sup> [Report of the National Crematorium Investigation](#), 17 June 2016, page 11.

<sup>93</sup> [Report of the National Crematorium Investigation](#), page 9.

## ICC

5. In 2013, the ICC was established. Led by Rt Hon Lord Boney, its remit was to:
  - (a) review the current policies, guidance and practice in Scotland in relation to the handling of all recoverable remains (ashes) of babies and infants, and to make recommendations for improvement to ensure that: parents and other bereaved relatives receive clear and consistent advice and information about the disposal of such remains and have their wishes adhered to; and that any such remains are treated sensitively and compassionately;
  - (b) consider existing legislation, with particular reference to the Cremation Act 1902 and the Cremation (Scotland) Regulations 1935, in order to identify gaps, inconsistencies and weaknesses and to make recommendations on what issues should be addressed in future legislation;
  - (c) consider existing practice and guidance in related fields such as the NHS and funeral services in order to identify gaps, inconsistencies and weaknesses that should be addressed; and to make recommendations on the format and content of future guidance; and
  - (d) give guidance on the conduct of any investigations of historical practice undertaken by Local Authority or independent crematoria operators.<sup>94</sup>
6. The ICC published its final report in June 2014, setting out 64 recommendations to improve processes in Scotland. Notably, for the purposes of this paper, these recommendations included:
  - (a) Recommendation 63: Scottish Ministers should appoint an independent Inspector of Crematoria.<sup>95</sup>
  - (b) Recommendation 64: Scottish Ministers should consider regulation of the funeral and crematoria industries and keep both industries under review.<sup>96</sup>

### *Responses to the investigations*

7. All 64 of the ICC's recommendations were accepted by Michael Matheson MSP, the then Minister for Public Health. This included the formation of the National Committee on Infant Cremation, whose main aims and objectives are

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<sup>94</sup> [Report of the National Crematorium Investigation](#), page 9.

<sup>95</sup> [Report of the Infant Cremation Commission](#), June 2014, section 2.63.

<sup>96</sup> [Report of the Infant Cremation Commission](#), June 2014, section 2.64.

set out in Recommendations 57 to 62 of the ICC report. They focus on the development of a Code of Practice on infant and baby cremations; ensuring recommendations from the ICC are implemented; promoting improvements in practice; and reporting annually to Ministers.

8. The 2016 Act was introduced to the Scottish Parliament on 8 October 2015 and received Royal Assent on 28 April 2016. It provides for the repeal of the primary Acts relating to burial and cremation, providing a modern, comprehensive legislative framework for burial and cremation.
9. The National Committee on Infant Cremation published a new Code of Practice on Infant Cremation in 2015. The purpose of this document was to draw together as many of the ICC recommendations as possible into a format which could easily be monitored by the ICC over time. The Code was not included in the Code of Practice in the 2016 Act, but was instead retained as a non-statutory instrument, which allowed the Committee flexibility to refine and amend the code as appropriate.
10. In 2015, an Inspector of Crematoria was appointed to:
  - (a) ensure crematoria were operating in line with the principles set down by Lord Bonomy, and in line with the new Code of Practice;
  - (b) report any criminal or potentially criminal activity to Police Scotland;
  - (c) visit every crematorium in Scotland at least once every year;
  - (d) deal with queries or complaints from the public; and
  - (e) provide an annual report to Ministers on activities, and report to Ministers on specific issues or concerns if needed.<sup>97</sup>
11. The National Committee on Infant Cremation updated guidance on the cremation of pregnancy losses. This revised guidance was issued to all NHS Health Boards in June 2015.
12. The Ministry of Justice launched a consultation on cremation in England and Wales in December 2015. The consultation closed early in March 2016.

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<sup>97</sup> [Report of the National Crematorium Investigation](#), page 15.

### *National Cremation Investigation*

13. In 2014, the then Minister for Public Health, Michael Mathieson MSP, announced the establishment of the National Cremation Investigation, led by the Rt Hon Dame Elish Angiolini DBE QC.<sup>98</sup> This was to be a separate, independent investigation into crematorium practices across Scotland and its terms were as follows:
  - (a) Investigate the circumstances around the cremation of any infant or baby referred to the Investigation team by bereaved parents or others, including the work of crematoria, hospitals and NHS Boards and funeral directors as necessary.
  - (b) Report back to the bereaved parents or others the results of that investigation, particularly in relation to the likelihood of there having been ashes following the cremation, and the whereabouts, if known, of any such ashes.
  - (c) Conduct a more general investigation into practices and operations at any specific crematorium where case-specific investigations give rise to more general concerns.
  - (d) Report back to the Minister at the conclusion of the investigation with a summary of the work undertaken and the key findings.<sup>99</sup>
14. During the Investigation, 320 witnesses were interviewed and 202 cases were referred to the investigation, involving 14 of the 29 crematoria across Scotland.<sup>100</sup>
15. The Investigation took place during the passage of the 2016 Bill through the Scottish Parliament. In the final report, published on 17 June 2016, Dame Angiolini stated that the investigation had identified additional issues and recommendations to those identified by the 2016 Act and Code of Practice (issued by the National Committee on Infant Cremation).
16. The report drew fifteen conclusions and recommendations. It also provided specific recommendations and conclusions for each of the fourteen crematoria referred to in the Investigation. The relevant recommendations and conclusions for this paper are:

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<sup>98</sup> [Report of the National Crematorium Investigation](#), page 18.

<sup>99</sup> [Report of the National Crematorium Investigation](#), page 19.

<sup>100</sup> [Report of the National Crematorium Investigation](#), page 21.

- (a) regulation of the funeral profession needed to be improved. Funeral directors and cremation authorities should be licensed and subject to a statutory regime of regulation and inspection;
- (b) the Scottish Government should exercise its powers under the 2016 to regulate the funeral directing profession;
- (c) an Inspectorate of the Funeral Business should be appointed incorporating the current role of the Inspector of Crematoria;
- (d) senior management and Chief Executives of Councils and organisations responsible for crematoria or funeral care must take responsibility for a forward-looking approach to management of their business, including ensuring a sensitive and caring culture in their organisations; and
- (e) senior management were responsible for leading and securing adequate training, appropriate working practices and a culture of care and sensitivity. Further, systems must be in place to ensure those services are delivered consistently and are subject to regulation and inspection.<sup>101</sup>

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<sup>101</sup> [Report of the National Cremation Investigation](#), page 40.

## **Appendix C: Quality regulation of funeral directors in international markets**

1. The services provided by funeral directors are regulated in a number of countries, including Australia, Canada, France, Spain and the USA.

### **Australia**

2. There is no comprehensive national or regional regulation for funeral directors in Australia. However, various aspects of death care are regulated on a state-by-state basis. For example:
  - (a) in Western Australia, funeral directors are required to hold a licence to operate; and
  - (b) in New South Wales, all vehicles must be cleaned appropriately and, if the vehicle is not refrigerated, transportation time is limited to eight hours.<sup>102</sup>

### **Canada**

3. Regulation of funeral directors in Canada occurs at the province and territory levels.<sup>103</sup> Individuals in all regions are required to hold a licence to operate as a funeral director and in most cases, applicants are expected to meet Funeral Service Education requirements (by having completed their education at an institution approved by the provincial regulatory authority) and experience requirements (by having completed an internship or apprenticeship).
4. Funeral homes are also subject to licensing requirements in most provinces and inspections are planned every one to three years to ensure compliance. In British Columbia, for example, inspectors check the different rooms in the funeral parlour and the vehicles used to transport bodies.<sup>104</sup> Licences can be suspended or revoked, and individuals and funeral homes fined, although this varies across regions.<sup>105</sup>

### **France**

5. In France, funeral services must be authorised by the Government. Lasting for six years, such authorisation is given only if the individuals show that they

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<sup>102</sup> Funerals regulation in comparator countries, prepared by Oxera for Co-operative Group and submitted to the CMA as part of the funerals market investigation, 16 April 2019, page 10.

<sup>103</sup> All provinces and territories provide such regulation, with the exception of Northwest Territories and Nunavut (which account for only 0.2% of the overall population).

<sup>104</sup> Funerals regulation in comparator countries, Oxera, pages 12 and 13.

<sup>105</sup> Funerals regulation in comparator countries, Oxera, pages 12 to 14.

have the necessary knowledge and skills and if the firm's facilities meet the regulatory requirements.

6. The following activities require an 'habilitation' or authorisation from the local government representative (the 'prefet'), which is valid for six years:
  - (a) Transport of human remains before and after placement in the coffin.
  - (b) Organisation of funerals.
  - (c) Embalming.
  - (d) Provision of coffin and accessories and of urns.
  - (e) Management and use of mortuaries.
  - (f) Provision of hearses and limousines.
  - (g) Provision of staff and objects necessary to the carrying out of funerals, committals (burials and cremations) and exhumations (with the exception of memorials, religious symbols, flowers, notices and other printing).
  
7. The regulation requires that:
  - (a) the funeral director must not be bankrupt or have been sentenced to imprisonment, and must be a citizen for European Economic Area;
  - (b) funeral directors, counsellors and master of ceremonies must hold a national diploma. Funeral directors should also have followed a complementary training course;
  - (c) funeral chambers must meet certain standards, including separation of the area where customers are welcomed and where the body is prepared, and refrigeration equipment that keeps the bodies between 0°C and 5°C (with separate storage equipment for each body); and
  - (d) the vehicles used to transport the body (before and after it has been placed in a casket) must comply with requirements regarding insulation of the funeral compartment from the rest of the vehicle, and the external appearance of the vehicle. These vehicles are inspected (at least) every three years.<sup>106</sup>

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<sup>106</sup> Funerals regulation in comparator countries, Oxera, page 16.



8. Only companies that engage in funeral director activities on a regular basis<sup>107</sup> require an authorisation, which is based on meeting strict requirements in relation to five criteria:
- (a) Morality (no criminal record for certain specified crimes and no personal bankruptcy) and nationality (French or EU national) of the directors.
  - (b) Professional competence of directors and agents. The legislation prescribes what level of qualification various funeral employees need to have. This not only applies to the CEO (if the company is a PLC), funeral directors, funeral arrangers and branch managers, but also to pall bearers, receptionists, drivers and other such junior employees. A national funeral advisor diploma, complemented by 42 hours of supplementary education (or evidence of an equivalent level of training), are mandatory for the CEO, manager of a funérarium (funeral parlour) or crematorium, branch manager, and funeral director. Embalmers need to have obtained a national embalmer diploma.
  - (c) Technical compliance of the facilities.
  - (d) Regular payment of taxes and other social charges by the applicant.
  - (e) Technical compliance of vehicles. The legislation prescribes how vehicles that are used for the transportation of bodies before and after placement in the coffin should be fitted out and prescribes the frequency of official controls to such vehicles should be subjected.

## Spain

9. Funeral directors face regulation at the national, regional and local level. National legislation includes requirements that vehicles are fit for the transport of bodies and that personnel are trained. Compliance with regulation is usually certified via inspections carried out on licence-holding funeral providers, although the frequency and nature of inspections is subject to local variation.
10. A separate regulatory regime applies to embalming, care of the deceased and the storage of bodies, and requirements include standards for facilities, such as refrigeration and separate rooms for the display of bodies and public

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<sup>107</sup> For example, local tradesmen in some rural areas (eg carpenters) may occasionally supply a coffin and can do so without an authorisation. The supply needs to be 'exceptional' for the exemption to apply.

access; a minimum number of trained personnel; and a minimum number of specialised vehicles with separate parking spaces.<sup>108</sup>

## USA

11. A licence is necessary to operate as a funeral director in almost all states. This licence can either give an individual the right to work as a funeral director only or as both a funeral director and an embalmer. To qualify for such a licence, funeral directors must meet age, education and experience requirement. In most states, they must be aged at least 21, hold a degree from a school accredited by the American Board of Funeral Science Education, complete an apprenticeship, and pass a certification exam. Licences must be renewed annually or every other year. For example:
- (a) In Georgia, to become a licensed funeral director, an individual must:
- (i) be at least 18 years old;
  - (ii) have graduated from high school or obtained a General Education Development Certificate;
  - (iii) have graduated from an accredited college of funeral service;
  - (iv) have completed a minimum of 3,120 hours of service as an apprentice;
  - (v) have passed a National Conference Exam; and
  - (vi) have passed the Georgia Laws & Rules Exam.
- (c) In California, to become a licensed funeral director, an individual must:
- (i) be at least 18 years old;
  - (ii) possess an Associate in Arts or Associate in Science degree (or equivalent); and
  - (iii) have committed no acts or crimes constituting grounds for denial of licensure under Section 480 of the Business and Professions Code.
12. Licences are also required for funeral homes in most states. For example, in Pennsylvania:

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<sup>108</sup> Funerals regulation in comparator countries, Oxera, pages 32 to 34.

- (a) bodies must be either be embalmed, kept in a sealed container or refrigerated;<sup>109</sup>
  - (b) bodies must be transported on a stretcher or in a special container in a horizontal, face-up position and covered from public view; and
  - (c) there must be a separate preparation room for preparing bodies and embalming.<sup>110</sup>
13. In general, the state funeral board is the organisation responsible for monitoring licensed establishments.<sup>111</sup> Funeral homes are inspected every one to three years.<sup>112</sup>

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<sup>109</sup> Refrigerators must be kept at 35 to 40 degrees Fahrenheit (1.4 to 2.6 degrees Celsius).

<sup>110</sup> Funerals regulation in comparator countries, Oxera, pages 37 and 38.

<sup>111</sup> The state boards are typically controlled by the state government (similar to statutory regulatory bodies), but the board may be composed of funeral directors active in the sector (ie similar to self-regulation).

<sup>112</sup> Funerals regulation in comparator countries, Oxera, page 37.