

# Funerals market investigation

## Information and transparency 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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## Introduction

1. Arranging a funeral is an important purchase, both financially and emotionally, for the bereaved. We recognise the extremely challenging circumstances in which the bereaved are required to make decisions regarding the purchase of a funeral. Despite these challenges, some of which are to a large degree inherent in the circumstances of losing a loved one, certain information and transparency remedies could help secure better outcomes for some customers.
2. Improving the availability and transparency of information on funerals could help improve the preparedness of customers ahead of the point of need and may help customers make better choices. However, some customers may find it difficult to increase their engagement with the funeral purchase decision and may be unlikely to respond to any information or transparency interventions. It will therefore be important to consider whether and how improvements in the level of engagement among some customers (eg higher level of shopping around) can protect those customers. Further, the possible remedies outlined in this paper may be part of a broader package of remedies to protect customers. Such a package may include:
  - (a) regulation of the quality of services provided by funeral directors;
  - (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.
3. The purpose of this working paper is to outline our emerging thinking on the possible remedies to improve transparency of prices, the availability of comparable information, and to promote better competition in funeral director and crematoria services, in the event that we find any adverse effects on competition (AEC(s)) in relation to those issues.
4. This paper describes the key design considerations for this category of remedies. The possible remedies 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.

## Summary

5. We think that information and transparency remedies may be necessary to address the challenges customers may face in making an informed decision

on their choice of funeral director and funeral services due to the lack of readily available and comparable pricing and service information.

6. We currently consider that the key elements of any information and transparency remedies could include:
  - (a) Making it easier for customers to assess and compare the prices and services and offered by funeral directors and crematoria operators by, for example, the establishment of a platform to facilitate price and service comparison;
  - (b) improving customer awareness of price and service information and funeral planning before the point of need;
  - (c) introducing a 'reflection period' to enable customers to consider their options before paying for services, supported by a potential cap on the fees charged for the collection transportation and storage of the deceased where a customer chooses to switch funeral director; and
  - (d) prohibiting certain forms of payment and requiring the disclosure of ownership structures and commercial relationships, in order to further increase transparency in the sector.
7. We note that some of the remedies discussed in this paper are already, to some extent, addressed in the Codes of Practice of the trade associations. However, these Codes of Practice only apply to their members and are voluntary. In contrast, our remedies could be mandatory and could apply to all funeral directors. Similarly, for crematoria, imposing information and transparency remedies on crematoria operators would ensure that there is consistent information provision to customers across the sector.

## **Framework for consideration of remedies**

8. If we find that there is any AEC(s), we are required to decide the following questions:<sup>1</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

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<sup>1</sup> Enterprise Act 2002, section 134(4).

- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
9. A detrimental effect on customers is defined as one taking the form of:<sup>2</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.
10. 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>3</sup>
11. 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>4</sup> The CMA may also have regard, in accordance with the Enterprise Act 2002, to any relevant customer benefits (RCBs) of the market feature or features giving rise to the AEC or AECs.<sup>5</sup>
12. 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.
13. 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>6</sup>
14. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including their practicability.<sup>7</sup> The effect of any remedy is always uncertain to some degree.
15. Assessing the effectiveness and practicability of any remedy may involve the consideration of several dimensions.<sup>8</sup> First, a remedy should be capable of effective implementation, monitoring and enforcement. Secondly, the

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<sup>2</sup> Enterprise Act 2002, section 134(5).

<sup>3</sup> Enterprise Act 2002, s 134(6).

<sup>4</sup> CC3, paragraph 329.

<sup>5</sup> Enterprise Act 2002, s134(7); CC3, paragraph 329.

<sup>6</sup> CC3, paragraphs 330 and 333.

<sup>7</sup> More detail on how the CMA may assess effectiveness is in CC3 from paragraph 334.

<sup>8</sup> CC3, paragraph 335-341.

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.

16. The CMA in considering the reasonableness of different remedy options will have regard to their proportionality.<sup>9</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>10</sup>
17. 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.
18. 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 affected by it.<sup>11</sup>
19. 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;

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<sup>9</sup> More detail on how the CMA may assess proportionality is in [CC3](#) from paragraph 342.

<sup>10</sup> [CC3](#), paragraphs 342 to 344.

<sup>11</sup> [CC3](#), paragraph 348-353.



- (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>12</sup>
20. The CMA's updated Market Investigation guidance allows the CMA greater time to consider potential remedies, and earlier discussion with parties.<sup>13</sup> However, the consideration of any possible remedies is always contingent on an AEC finding having been reached.<sup>14</sup>
21. Below, we describe the transparency and information remedy options that we have considered could remedy, mitigate or prevent potential AECs that we might find in the relevant markets, and / or their detrimental effect on customers. We outline each of these remedy options in turn, describing how they are intended to work in practice.
22. In discussing the potential remedies below, we distinguish between remedies targeted at funeral directors from those targeted at crematoria, given the distinctive characteristics of each market and the different AECs we may find.

## **Possible transparency and information remedies on which views are sought**

23. Following this market investigation, if we find areas in which competition is not working well for the benefit of customers, we may introduce remedies to make it easier for people to make decisions regarding funerals. We may find that the difficulties many people face in choosing a funeral are an important cause of any AEC and we may find that tackling these underlying causes, where feasible, would also help address some of the detriment arising from any AEC. The key elements of any such remedies, currently under consideration, are:
- (a) improving the transparency of the price of funerals, such as disclosure obligations on service providers, and/or comparison and configuration tools for customers organising their own funeral and for the bereaved;

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<sup>12</sup> CC3, paragraphs 354 to 369.

<sup>13</sup> Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (Revised July 2017) (CMA3).

<sup>14</sup> CMA3, paragraph 3.50.

- (b) helping people to plan and navigate the process of arranging a funeral, such as signposting various options and facilitating earlier conversations between families and service providers;
  - (c) giving families more time in which to make these decisions and reducing the time pressure many people feel under when choosing a funeral director, such as improving customers' understanding of their ability to switch service providers after removal of the deceased as well as reducing the barriers to switching through the introduction of a potential cap on the fees charged when a customer chooses to switch funeral director; and
  - (d) disclosing funeral directors' commercial relationships and conflicts of interest in the interests of further transparency in this market.
24. We note that transparency remedies in relation to crematoria may only be effective in areas where customers have a choice of crematoria. About half of crematoria in the UK have no alternative within a 30 minutes' drive, and as such, encouraging shopping around in these circumstances will not help a large number of customers.
25. Some of the transparency remedy options for funeral directors discussed below are already, to some extent, addressed in the Codes of Practice of the trade associations. However, these Codes of Practice only apply to their members and are voluntary. In contrast, our remedies could be mandatory and apply to all funeral directors. Similarly, for crematoria, imposing transparency remedies would ensure that all crematoria adopt these remedies in a consistent manner across the industry.
26. The Scottish Government has consulted on a draft code of practice that would require increased transparency in the use of language and terminology by funeral directors in Scotland (eg when a funeral director addresses a customer, displays pricing within its premises/online, its definition of a simple funeral and transparency of pricing at the point of sale). Although the CMA is closely following the development of the code of practice 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. We recognise that the developments in Scotland could have implications for addressing any AECs we may find, and we intend to ensure consistency, so far as possible, in the treatment of funeral directors across the UK. As such, the CMA will consider how these codes of practice could be adopted and/or amended, if relevant and appropriate to our findings.

### ***Invitation to comment***

27. 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 crematoria operators and any detrimental effects on customers resulting from those AECs.
28. We welcome views from parties on the remedies described below, and the relative attractiveness of the different approaches to achieving their aims. We invite parties' views on the following:
- (a) What are the expected costs to funeral directors and/or crematoria of implementing the remedy and reporting compliance?
  - (b) How should compliance with the remedy be demonstrated and how should this be supervised by the relevant bodies?
  - (c) Should any remedies be time-limited? If so, why?
  - (d) Should we consider a firm size threshold for any of the remedies discussed here? And if so, what should that threshold be, and why?
  - (e) Are there any relevant customer benefits in either market that may be lost or reduced by the implementation of these measures and that we should consider as part of our assessment of any remedy package?
  - (f) Are there any other remedies that may equally or more effectively improve the availability and transparency of information to consumers?

### ***Remedy 1 – Price transparency and comparability***

#### ***Aim of this remedy***

29. This remedy could make it easier for customers to research prices and services and compare funeral directors before they meet a funeral director, rather than only during or after the initial meeting.
30. This remedy discusses possible changes to the presentation and availability of pricing information. Pricing information could be supplemented with other information such as information on service quality. It could be provided to potential customers before the arrangement meeting. Also, pricing information could be presented to customers in a transparent and consistent format across all funeral directors and crematoria
31. The aims of this remedy are to:

- (a) facilitate shopping around and increase customer awareness of total funeral costs and price differentials;
- (b) enable better comparison of funeral directors' prices and quality of services;
- (c) prepare the customer for the arrangement meeting by creating awareness of all the options available to the customer, including low-cost options;
- (d) give customers a better picture with regard to what the final bill may look like (early on in the process of choosing a funeral director and before the arrangement meeting) and thus reduce the scope for the final price to substantially exceed the initial quote; and
- (e) allow the customer to first think about what kind of funeral they want, to understand the impact on price of their choices and to help the customer choose the funeral director to deliver the funeral they want.

*Description of this remedy*

32. There are several options (or combinations of options) that could achieve the objectives listed above that we think are worth exploring in more detail. We could, for example, require funeral directors and crematoria operators to:
- (a) make their prices available online, over the telephone, or in branch (ie before the arrangement meeting with a potential customer).
  - (b) provide prices to potential customers at their first point of contact (whether in branch, over the telephone or online) rather than upon request by the customer.
  - (c) adopt the same price reporting template whether they sell directly to customers (whether in branch, over the telephone or online) or through a third-party platform.
  - (d) provide disaggregated pricing and service information, such as:
    - (i) specific component prices (eg car, collection, transport and storage of the deceased, coffin, embalming, etc) or a package of specific components (eg those components that could be mandatory); and
    - (ii) disbursement costs (eg celebrant, flowers, etc), in order to convey typical total costs (even when these disbursements are nil, such as for ministers belonging to the Church of Scotland), including information and general advice on a typical range of disbursements.

- (e) offer the same price across all of their sales channels; and
  - (f) facilitating all of the above by, for instance, establishing an independent platform that could allow customers to compare providers and build their own funeral package by selecting individual elements. We discuss this part of the remedy in more detail below.
33. By making prices available online and in branch, and proactively informing customers of the costs of various components of a funeral, this could help customers make better, more-informed decisions with regards to which funeral director to choose, what package is most suitable for their needs and also how their choice compares with the prices offered by other providers in the market.
  34. By providing consistent and disaggregated pricing and service data information, this remedy could also achieve greater transparency and comparability between alternative funeral directors and crematoria. This could help some prospective customers to make more informed decisions prior to purchasing a funeral package from their chosen funeral director and potentially drive competition between providers.
  35. We might require funeral directors and crematoria to adopt the same pricing structure regardless of the sales channel used. If this is the case, this remedy would eliminate price differentiation between online and in-branch sales. We may also explore arguments for and against a requirement for a network of funeral directors to have the same prices nationally.

#### *Independent platform*

36. The main objective of this remedy would be to make it easier for customers to compare fees and charges. There are various ways of achieving this objective and in this section, we describe one possible solution. We consider this solution likely to be both effective and proportionate in achieving its aim. However, we invite views from interested parties as to how best to achieve this remedy's objective: how to increase price transparency and comparability.
37. To provide customers with information on a comparable and consistent basis to aid decision making, the CMA could oversee the setup of an industry-funded platform. This platform could require fees and charges for all funeral directors to be presented in a consistent format that is easy for customers to understand. It would also require the platform to have an independent governance structure to oversee changes to the platform as the industry evolves.

38. The CMA could work with funeral directors, crematoria operators and customer groups, amongst others, to develop this platform whereby providers could be required to produce a list of all available standard products and services that they offer. We recognise that some packages and services may be personalised at the customer's discretion, but standard elements of these packages would need to be easily comparable across providers, such as, collection, transport and storage of the deceased, funeral arrangement, viewing of the deceased, flowers, amongst others. In particular, the collection, transport and storage of the deceased would need to be easily comparable across providers to enable customers to more easily compare and assess the price of this service across funeral directors.
39. The platform could contain products and prices, disaggregated to a level which would be easily understood by customers and would allow them to configure a funeral service to their own requirements. The platform could enable customers to compare the prices offered by funeral directors and crematoria more easily, as well as to better understand the impact on the total price of a funeral service of the addition or removal of a particular component. The platform could be used by customers ahead of choosing a funeral director and ahead of any initial meeting with the chosen funeral director.
40. The kind of disaggregation described above is a requirement of the 'Funeral Rule' in the USA and similar rules apply in the French market, although neither the US or French markets has established a platform (one reason being that these developments happened before the internet entered commercial use).<sup>15</sup> For example, in France, funeral directors are required to make price information available to the local authority. We will consider whether there could be benefits to requiring funeral directors to provide price information to local authorities, given that we understand that local authorities offer bereavement services. We also recognise that some authorities commission funeral director services.
41. Furthermore, we could also recommend the local registrars make people aware of the existence of the platform and encourage them to use it prior to the engagement meeting with a funeral director. Not everyone will contact the local authority bereavement services, but everyone has to go to the registrar, in person. We note that in France, local authorities are obliged to make information on all funeral directors in their area available to customers on the local authorities' website or at their premises.

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<sup>15</sup> Please refer to the International Comparison working paper for further information on the disaggregation of funeral services in France and the USA.

*How the platform could work*

- *Funeral directors*

42. We envisage that the platform could work along the following lines:
  - (a) Customers could enter their postcode (or the postcode of the deceased) to see all funeral directors within a given distance (for instance, a 30-mile radius).
  - (b) Next, they could 'configure' the service they want, starting with the most basic elements of a funeral service, and adding additional services depending on their needs and budget.
43. The platform could allow for flexibility, such as allowing the customer to choose a crematorium.
44. The platform could show both the cost for each service and the total cost for each available funeral director in the area. The platform could be interactive and allow users to select and deselect different options until they build a suitable package for their needs or budget. This could include the cost of third parties, such as celebrants.
45. The platform could also help customers understand the impact of a particular choice on the fees that they would have to pay. For instance, when customers choose a standard set of funeral components but want to personalise elements of that final package, the platform could show customers upfront that deviations from the standard package may incur additional fees what those fees may be. Therefore, there could be greater transparency when customers reconcile the final bill with the initial estimate or quote given by a funeral director during the engagement meeting.
46. The CMA could require all funeral directors (and crematoria operators) to use the platform in their engagement meetings to ensure a consistency of presentation for customers.
47. Another aspect of personalisation could be the service providers' payment terms. To address this, the platform could prompt the customer to say what payment terms are most desirable and could show only those funeral directors that offer such payment terms. The customer could change the inputs and see how the price changes if payment in advance is chosen versus payment in arrears, for instance. Similarly, the platform could have an option for customers that require state funding for the funeral. Funeral directors would not be obliged to offer all options, but they would not appear in the results if they did not offer an option which met the customer's requirements.

48. In line with the OFT's recommendation in 2001 for coffins to be priced in brochures, the CMA could require funeral directors to maintain a brochure of the products they currently offer. Any online brochures could then be linked to the platform. This could help customers make more informed decisions prior to committing to a particular choice of coffins, when comparing products and prices by reference to their quality and overall aspect.
49. Another benefit of the platform could be to integrate a rating system within the pricing platform so that customers can assess a funeral directors' service quality in addition to their price.
50. Thought will need to be given to the design of the platform, in particular, how the results might be displayed. For example, the results could be displayed randomly or by another variable, such as distance, price or rating. Payment by service providers for rankings (as it is the model of many price comparison websites) would likely be prohibited.
  - *Crematoria operators*
51. The platform could help customers to make a more informed decision when choosing a crematorium by showing the options, prices, and availability for a planned funeral.
52. We envisage that the platform could work along the following lines:
  - (a) Customers could enter their postcode (or the postcode of the deceased) to see all crematoria within a given distance.
  - (b) Next, the customer could enter the date, time and length of the service to see those crematoria with available capacity. The platform could also provide for a more flexible search (eg within 5 days of the preferred date and at different times of day).
53. We envisage that both funeral directors' and crematoria fees will be available on the same platform. Therefore, a customer requiring a direct cremation could go to the same platform as somebody wanting a full-service traditional funeral. This may enable customers to better understand the differences between service types and the prices associated with their choices.
54. The platform could include details of all cremation options (eg comparable information on fees, slot lengths, what is included and excluded in the price,



and distance from the funeral director's branch).<sup>16</sup> The platform could show variations in price for the same service depending on day and time of day (similar to the Scottish Government Costs Guidance requirements).<sup>17</sup>

#### *Issues to consider*

55. The platform could provide those customers that are willing to assess and compare funeral directors with the necessary tools and information to better and more easily perform that exercise before the point of purchase. We note that providers may incur some costs in making changes to their systems to enable them to provide the information required for the platform. We do not envisage these costs to be significant - we note that the provision of standardised quotes is already a requirement in France, and we understand that this was implemented without significant cost or difficulty. The establishment of the platform and the requirement to present pricing information in a consistent manner could also reduce incentives for providers to innovate in the way they present and price their services. We intend to consider the cost of the platform, as well as any potential loss of innovation, against the benefits of providing better pricing and service information to customers.
56. We are mindful that the inclusion of crematoria on the platform may only be effective if the customer is willing to choose or change to a funeral director who is willing and able to offer a service at a time that the family require. For instance, if a family find a crematorium and a slot that suits them, but the funeral director either cannot (due to capacity restrictions) or will not (due to other circumstances) be able to service that choice, then the customer will need to be willing to switch funeral directors, which may require the deceased being moved to a different provider. Alternatively, the customer could change the sequencing of organising a funeral, such that the customer first selects a crematorium and a suitable time slot, and then finds a funeral director that is able to service that choice. We will need to consider who stores and moves the deceased under these circumstances and who is responsible for paying for this.

#### *Invitation to comment on Remedy 1*

57. We invite views on the following questions:

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<sup>16</sup> We note that the [Dignity Crematorium finder](#) provides a similar service.

<sup>17</sup> See [Scottish Government Costs Guidance](#).

- (a) How can we best facilitate shopping around and increase customer awareness of total funeral costs and local price differentials?
- (b) How can we enable better comparison of funeral directors' prices and quality of services?
- (c) How can we better prepare the customer for the arrangement meeting and make them aware of all the options offered by the funeral director, including low-cost options?
- (d) How can we give customers a clearer idea of the final cost (early on in the process of choosing a funeral director and before the arrangement meeting)?
- (e) How can we make the platform most useful for customers how can we ensure that it is used by as many customers as possible?
- (f) Should funeral directors and crematoria operators be required to adopt a standardised methodology for presenting pricing and service data as an alternative to the platform?
- (g) Should crematoria availability be incorporated into the platform?
- (h) What will be the likely costs of this remedy?
- (i) Will this remedy give rise to any potential unintended consequences?

***Remedy 2 – Intermediaries to (more effectively) inform customers of their options and encourage shopping around***

*Aim of this remedy*

58. To increase the effectiveness of Remedy 1, customers will need to be made aware of the platform. This could be achieved through general advertising campaigns or through funeral directors' and crematoria operators' websites and by intermediaries such as registrars, care homes, hospitals and health care providers and charities, amongst others, informing the bereaved of the platform.

*Description of this remedy*

59. The CMA could develop guidance or ask a third party, such as the Care Quality Commission (CQC), to develop guidance to support intermediaries in their discussions with the bereaved about funeral planning. These discussions

could take place when an individual enters a care home or hospice, or when death is anticipated or has just occurred.

60. The CQC inspects and rates end of life care services in hospitals, community health services and hospices, and assesses quality of end of life care in other settings, including care homes and GP practices. Amongst many other factors, the CQC seeks to address how people who may be approaching the end of their life are supported to make informed choices about their care, and the CQC also examines whether people's decisions are documented and delivered through personalised advanced care plans.<sup>18</sup> The CQC does not, however, focus specifically on supporting people with funeral planning or making funeral choices.
61. The CQC's sector specific guidance for hospices for adults<sup>19</sup> assesses whether those close to the patient are offered information on how to access bereavement support; whether staff have an understanding of the practical arrangements needed after the death of a family member; and whether people's spiritual, religious, psychological, emotional and social needs are taken into account. It also assesses whether the service provider ensures that care after death includes preparing the body for transfer to the mortuary or funeral director's premises.
62. The CMA could recommend that the CQC builds guidance on funeral planning into their assessment frameworks to ensure that hospitals, hospices and others discuss and record funeral choices and funeral planning as part of the advanced care planning discussions.
63. We consider that guidance on funeral planning provided close to or at the point of need would provide benefits, alongside the provision of information before the point of need and could be an effective way to encourage customers to consider their funeral services needs.
64. The guidance could include the following information:
  - (a) Explaining to the bereaved that they can change funeral director after the deceased has been collected from the place of death and that they

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<sup>18</sup> See CQC's assessment framework: Key lines of enquiry, prompts and ratings characteristics for healthcare care services. This assesses how acute and community health service patients who may be approaching the end of their life are supported to make informed choices about their care. The CQC's Acute core service – end of life care assesses what emotional support and information is provided to those close to people who use services and whether people are given the opportunity to create an advance care plan. This is underpinned by the Bereavement Care Service Standards, a professional standard developed by Cruse and the Bereavement Services Association, which provides a practical tool against which to benchmark what services such as hospitals and hospices offer. The standards set the criteria for what clients, carers etc can expect from bereavement care services.

<sup>19</sup> Sector specific guidance for hospices for adults.

are not obliged to remain with the funeral director that collected the deceased.

- (b) A checklist of questions that customers may wish to ask the funeral director.
- (c) Funeral directors and crematoria in the local area (and possibly their prices).
- (d) Information on the platform.

65. The CMA could also require funeral directors and crematoria operators to publicise the platform on their website and other promotional material, as well as during arrangement meetings with customers.

*Invitation to comment on this remedy*

66. We invite views on the following questions:

- (a) Are there intermediaries other than the CQC who provide, or are well placed to provide, information on funeral planning to those close to death or to the bereaved?
- (b) Are other ways in which funeral directors and crematoria operators can raise awareness of the platform other than providing information on their websites and promotional material and discussing the platform at the arrangement meeting?
- (c) Are there alternatives to raising awareness of the platform to general advertising and the use of intermediaries?
- (d) What are the likely costs of this remedy?
- (e) Will this remedy give rise to any potential unintended consequences?

***Remedy 3 – Funeral planning awareness before the point of need***

*Aim of this remedy*

- 67. This remedy supports Remedies 1 and 2 by promoting funeral planning awareness before death by encouraging online searching through media campaigns and leaflets at appropriate organisations.
- 68. The purpose of this remedy would be to make customers aware of the costs of a funeral and the typical steps involved in planning a funeral, as well as how to access information about the cost of funerals before the point of

purchase. This would help customers assess and compare funeral directors and their services and choose the funeral director that best meets their needs.

#### *Description of this remedy*

69. The CMA could recommend to Government to invest in and run media campaigns and produce literature about funeral planning, as well as raising awareness of the platform described under Remedy 1.
70. The CMA could also recommend that local authorities, specifically those individuals or teams responsible for bereavement services, raise awareness about funeral planning on their website and through wider outreach work in their local areas.
71. The CMA could also work with the Citizens' Advice Bureau and other similar organisations to develop information and guidance on funeral planning.

#### *Issues to consider*

72. We considered requiring funeral directors (rather than Government) to invest in and run media campaigns on funeral campaigns. However, our initial view is that it would likely be more effective for Government to run the campaigns, as it is independent of the funerals sector. This remedy would not prohibit funeral directors or the trade associations from undertaking their own activities to raise awareness of funeral planning.
73. We note the increased popularity of pre-paid plans in the UK funerals sector. However, we also note that pre-paid plans are currently under investigation by the government as to whether this market is working effectively. In June 2018, the government launched a 'call for evidence' on the regulation of the pre-paid funeral plan sector following concerns about the risk of customer detriment.<sup>20</sup>
74. Following this exercise, the government stated that responses to the 'call for evidence' confirmed that customer detriment is present in the market and that there is a need for compulsory regulation of the sector. Furthermore, the government maintained its position that bringing funeral plan providers within the remit of the FCA would be the most effective policy response for strengthening the regulation of the market.
75. Between June and August 2019, the government published a consultation document which provided a summary of the responses to the 'call for

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<sup>20</sup> <https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal>.

evidence' and sought stakeholder views on proposed amendments to the legislative framework which will bring all funeral plan providers within the remit of the FCA. To date, the results of this consultation have not been made public.

76. We think that pre-planning can be a valuable tool through which consumers can make decisions in advance. However, we cannot comment on pre-paid plans at this stage or whether they are a valuable tool for consumers to use as part of their funeral pre-planning.

*Invitation to comment on this remedy*

77. We invite views on the following questions:

- (a) Are there particular circumstances prior to the point of need at which consumers are likely to be receptive to the idea of preparing for their funeral or that of a loved one?
- (b) What interventions (if any) are likely to encourage funeral planning and how might they be delivered?
- (c) Should this remedy target particular types of consumers?
- (d) What are the likely costs of the remedy?
- (e) Will this remedy give rise to any potential unintended consequences?

***Remedy 4 – Mandatory 'reflection period'***

*Aim of this remedy*

78. This remedy could provide customers with a period of time before selecting their funeral director, in order for them consider their options and select the funeral director that best meets their needs and to avoid making the wrong decisions at a time of distress.

*Description of this remedy*

79. We could require funeral directors to allow customers a 'reflection period', which could take place either before or after the customer signs the contract with their chosen funeral director. We could also require funeral directors to allow customers to choose a different provider or different services from the same provider at minimal or no additional cost.

80. We note that consumers have existing information and cancellation rights from certain services contracts, as set out in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs). Consumers have different information rights and cancellation rights depending on whether the service contract is concluded:<sup>21</sup>
- (a) 'on-premise' (eg on the funeral director's premises);
  - (b) 'off-premise' (eg in the customer's home or in a care home, for example);  
or
  - (c) at a 'distance' (eg online, over email or over the phone, for example).
81. Before the consumer is bound by an 'on-premises contract', a trader must give or make available to the consumer certain information in a clear and comprehensible way, if the information is not already apparent from the context.<sup>22</sup> For example, that information includes: the main characteristics of the goods or services, the total price of the goods or services inclusive of taxes, all additional delivery charges and any other costs, the arrangements for payment, the complaint handling policy, and the conditions for terminating the contract.<sup>23</sup>
82. Similarly, before a consumer is bound by a 'distance contract' or an 'off-premises contract', the trader must 'make available' or 'give' the consumer certain information in a clear and comprehensible way.<sup>24</sup> That information includes the same information as required for an 'on-premises contract', but also includes:<sup>25</sup>
- (a) more information about the identity and geographical location of the trader; and
  - (b) as 'distance contracts' and 'off-premise contracts' may have additional cancellation rights, the trader must inform the consumer of the conditions, time limit and procedures for exercising the right to cancel, where such a right exists.

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<sup>21</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, section 5 for the definitions of a 'distance contract', 'off-premises contract' and 'on-premises contract'.

<sup>22</sup> CCR 2013, section 9.

<sup>23</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Schedule 1, Information relating to on-premises contracts.

<sup>24</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, s10(1)(a) 'off-premise' and s13(1)(a) 'distance' contract.

<sup>25</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, Schedule 2, Information relating to distance and off-premises contracts.

83. For off-premise and distance contracts as defined in the CCRs, customers may have the right to cancel without giving any reason, and without incurring any liability (except in some circumstances, such as in relation to services that have already been provided following an express request from the customer) for 14 days from the date the contract is concluded.<sup>26</sup> The trader must not begin the supply of services before the end of the cancellation period unless the customer has made an express request.<sup>27</sup> If the service has been fully performed at the request of the customer within 14 days of the contract, then the customer is unlikely to have a cancellation right.<sup>28</sup>
84. Customers do not currently have the same statutory cancellation rights for an 'on-premises contract', such as when a contract is concluded in the funeral directors' office.
85. The potential 'reflection' period remedy could take one of the following forms:
- (a) impose a mandatory pause or 'reflection' period between an arrangement meeting on-premises and before signing any contract; or
  - (b) have cancellation rights for on-premise contracts in line with the cancellation rights for off-premise and distance contracts described above.

#### *Issues to consider*

86. In the scenario described in paragraph 85(a), the customer might incur additional costs (such as, moving the deceased to a different provider). In the scenario described in paragraph 85(b), the costs may only arise as the date of the funeral approaches. We invite views from interested parties as to how long the period for a customer changing their mind without incurring costs could last in either or both cases.
87. We would be mindful of when and how long this period should last, bearing in mind that customers may incur additional costs for longer storage of the deceased and thus delaying the funeral process.
88. As well as additional cost, we also need to be sensitive to certain religious / cultural preferences where there is a desire to have the funeral as soon as possible after death which may make any reflection period ineffective. For

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<sup>26</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, section 29 and section 30.

<sup>27</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, section 36(1).

<sup>28</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, section 36(2).



instance, it is common in most parts of Northern Ireland for the burial to be as quick as two or three days after the death.

89. In considering this remedy further, we would be mindful of the range of scenarios in which a customer may engage a funeral director (such as, over the phone, in person on the funeral director's premises or in the customer's home), and the range of services they may have engaged the funeral director for. For example:
- (a) if a customer calls a funeral director outside of standard working hours to arrange for collection, transport and storage of the deceased, and the funeral director has already provided that service; or
  - (b) if the customer and the funeral director entered into a service contract to arrange the funeral over the phone or by email, then the customer may already have cancellation rights if the contract is a 'distance contract'.

*Invitation to comment on this remedy*

90. We invite views on the following questions:
- (a) Is a 'reflection period' an effective mechanism for encouraging customers to ensure that they choose a funeral director that best meets their needs?
  - (b) If so, when should this "reflection period take place?
    - (i) After getting information on funeral options from a funeral director on its premises and before signing the contract?
    - (ii) after signing the contract in an arrangement meeting but having cancellation rights for a certain period of time afterwards? or
    - (iii) another suitable time?
  - (c) What are the likely costs of this remedy?
  - (d) Will this remedy give rise to any potential unintended consequences?

***Remedy 5 – Potential cap on the level of charges incurred for the collection, transportation and storage of the deceased***

*Aim of this remedy*

91. This remedy would help to address any barriers to switching arising from additional charges that a customer may incur if they choose to take advantage

of the opportunity afforded by a 'reflection period' and choose to switch to an alternative funeral director. The original funeral director may levy a charge to cover the costs that they have already incurred for the initial collection, transportation and storage of the deceased. Such a charge could act as a barrier to switching, undermining competition and lead to poor outcomes for customers.

#### *Description of this remedy*

92. To reduce this potential barrier to switching, we could set a cap on the level of charges that a funeral director can levy for the collection, transportation and storage of the deceased to recover the costs that the funeral director has incurred prior to the customer switching to an alternative funeral director (or the costs incurred if the customer chooses not to switch). We envisage that such a cap could apply to all funeral directors (and not a subset of funeral directors) to ensure that this possible barrier to switching is addressed across the whole sector.
93. If we were to set such a cap, we consider it likely that the cap would be based on the costs of collecting, transporting and storing the deceased. There are two main ways that the level of any cap could be set on this basis:
  - (a) Using information on the level of actual costs incurred by funeral directors. The level of costs incurred would likely be ascertained on a sample basis, given the large number of funeral directors and the difficulties in collecting cost information from independent funeral directors.
  - (b) Developing an understanding of the costs that would be incurred by a 'hypothetical efficient operator' using information from a sample of providers – potentially focussing on those funeral directors that we understand to be relatively efficient in their operations.
94. The activities of collection, transportation and storage of the deceased are relatively homogenous services in that they are not characterised by quality differentiation or reflect the personal wishes of the deceased or their friends and family. Further, we note that:
  - (a) the collection, transportation and storage of the deceased is typically part of a bundle of the funeral director's services, where there are various different elements of the service included in a single bundled price; and
  - (b) the price charged to customers does not vary by how much the customer utilises the services. For example (for a given package), there are not usually additional charges to reflect a longer period between the initial

collection of the deceased and the burial or cremation (which would require longer storage), or for longer or more consultation meetings between the customer and the funeral director staff.

95. Therefore, we consider that it should be achievable to identify the efficient level of costs for the collection, transportation and storage of the deceased and it should be easier for funeral directors to provide these services at an efficient cost without undermining the level of service they provide.

*Issues to consider*

96. To consider further the design of a cap on the collection, transportation and storage of the deceased, including the level to set the cap, we will require additional information on the costs incurred by funeral directors in providing these services. We will need to identify the cost information that will be required and identify funeral directors from which to request the information. We would also consider how any cap on the collection, transportation and storage of the deceased interacts with other potential remedies, including any price control on funeral directors.

*Invitation to comment on this remedy*

97. We invite views on the following questions:
- (a) Will the imposition of a cap on the collection, transportation and storage of the deceased encourage more customers to switch funeral directors after having reflected on their original choice of funeral director?
  - (b) How should the cap be calculated?
    - (i) Should the charge for collection and transport reflect the distance covered by the funeral director or represent an average cost?
    - (ii) Should there a daily charge for the storage of the deceased or an average charge for storage, which reflects the average length of time that the deceased is typically stored?
  - (c) Are there other approaches to setting a potential cap on charges levied by funeral directors for the collection, transportation and storage of the deceased (other than cost-based approaches) that the CMA should consider?
  - (d) What are the likely costs of this remedy?
  - (e) Could this remedy give rise to any unintended consequences?

## ***Remedy 6 – Managing conflicts of interest***

### *Aim of this remedy*

98. This remedy could prohibit certain payments and inducements, in order to eliminate any conflicts of interest that may adversely impact the service offered by funeral directors to customers.

### *Description of this remedy*

99. We could impose prohibition of certain forms of payment, such as:
- (a) partnership agreements with hospices or care homes which involve direct referral payments when the hospice or care home facilitates an introduction to a funeral director business; and
  - (b) commissions to employees for upselling funeral packages.
100. Commissions or inducements of any kind, including to care homes and, hospices for upselling, may adversely impact customers, who may believe that advice from these institutions is independent. Our current understanding is that most funeral directors do not engage in this type of practice.
101. In addition to prohibiting certain forms of payment, we could require funeral directors to disclose to customers in a clear and prominent manner any business interests that might give rise to a conflict of interest.
102. We note that if a care home or hospice received an inducement to recommend a funeral director, this may be material information for the purposes of consumer law and should be disclosed.<sup>29</sup>
103. We acknowledge that some funeral directors make general donations to local charities or contributions to their local communities. This remedy would not capture such payments, although we may expect funeral directors to make these payments public.

### *Invitation to comment on this remedy*

104. We invite views on the following questions:

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<sup>29</sup> Consumer Protection from Unfair Trading Regulations 2008.

- (a) Are there any other ways to eliminate conflicts of interest that may adversely impact the quality of service provided by funeral director to customers?
- (b) Are there any other types of inducements or payments that should be captured by this remedy?
- (c) What are the likely costs of this remedy?
- (d) Will this remedy give rise to any potential unintended consequences?

### ***Remedy 7 – Disclosure of business ownership and other commercial relationships***

#### *Aim of this remedy*

105. This remedy could require funeral directors and crematoria operators to disclose their ownership structures so that customers choose their provider on the basis of all the available information.

#### *Description of this remedy*

106. We are exploring two main elements of this remedy:
- (a) Disclosure of some forms of commercial relationships, such as vertical integration.
  - (b) Transparency of business ownership.
107. The CMA could require funeral directors and crematoria operators to disclose their business ownership structure. This remedy could apply to branches that form part of a larger funeral director business, so that customers are aware of whether the funeral director is part of a larger business or is, instead, an independent business. This information could be disclosed on premises and websites and any other promotional material.
108. The CMA could also require funeral directors and crematoria to inform customers of any changes in ownership, such as when an independent funeral director is acquired by a larger multi-site operator, so that customers are aware of the current ownership structure.
109. The CMA could also require funeral directors to disclose when they recommend a crematorium that is owned by the same company as the funeral director business, in order to address the presence of vertical integration in the funerals sector.

*Issues to consider*

110. We intend to consider further:

- (a) the potential harm that non-disclosure of business ownership and other commercial relationships causes customers
- (b) the types of business ownership and other commercial relationships that should be disclosed to customers;
- (c) funeral directors' and crematoria operators' existing disclosure policies;  
and

111. any other items that should be disclosed to customers, such as a change in staff.

*Invitation to comment on this remedy*

112. We invite views on the following questions:

- (a) What potential harm could the non-disclosure of business interests and other commercial relationship cause customers?
- (b) What business relationships and other commercial relationships should be disclosed to customers?
- (c) How should such interests and relationship be disclosed to customers?
- (d) What are the likely costs of this remedy?
- (e) Will this remedy give rise to any potential unintended consequences?