

# Funerals market investigation

## Remedy options for regulating the price of funeral director services at the point of need

**20 February 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 19 March 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 [✂].

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## Summary

1. In our Issues Statement we said that we would consider the potential for pricing remedies in the context of the funeral director and crematoria sectors. This working paper summarises our current thinking on remedy options for regulating the price of funeral director services. In this working paper we set out the framework the CMA uses for consideration of remedies and provide further detail on the aims and overall approach to price control remedy options. We also set out some key design considerations for any potential price control regulation.
2. In summary, and for the reasons set out in the rest of this paper, our current thinking is that if implemented, a price control remedy:
  - (a) Is likely to apply to all providers of funeral director services in the United Kingdom (UK) (paragraph 38);
  - (b) is likely to apply a maximum price to a defined 'benchmark' package of funeral products and services (paragraph 59);
  - (c) could exclude disbursement costs, albeit potentially with an obligation to pass these costs onto customers without a mark-up/profit margin added (paragraph 57);
  - (d) would be set by reference to available pricing data for comparable products and services provided across the UK (paragraph 61);
  - (e) would be accompanied by a recommendation to government for the establishment of a new regulator which would eventually assume responsibility for any price control regulation (paragraph 84);
  - (f) would initially be implemented through the CMA's order-making powers. We are considering whether price controls overseen by the CMA should be introduced on a time-limited basis as a transitional measure, for example until a new regulator is put in place (paragraph 86).
3. We would welcome views on the issues and options we have evaluated in this paper. We would also welcome other proposals or comments on any issues which we have not addressed in this working paper.

## Overview

4. The CMA is considering a range of remedies for funeral director services, including measures to increase competitive pressures by improving the availability and transparency of information. Given the possibility that these

may not be capable of comprehensively addressing any AECs, or of doing so within a reasonable period of time, this paper considers how some form of price control may also help to address AECs and any detriment arising from them. It therefore envisages price control as part of a package of remedies.

5. The CMA's general preference is to deal comprehensively with the cause or causes of the AECs wherever possible and by remedies which may significantly increase competitive pressures in a market.<sup>1</sup> However, our approach to remedies in any given case will reflect both the scope for increasing competition to the extent necessary to tackle the underlying concerns, as well as the degree and nature of any detrimental effect on consumers. Detrimental effects may be in the form of higher prices, lower quality, less choice of goods or services, or less innovation.<sup>2</sup>
6. In this context, we are mindful of the uniquely challenging emotional and practical circumstances facing the bereaved in making choices about funerals. These circumstances may limit the extent to which 'demand-side' interventions, such as increased information transparency, could reasonably be expected to secure fully competitive outcomes, such as that prices were at a level one would expect to find in a well-functioning market.
7. The purpose of this working paper is to outline our current thinking and includes some suggestions on the possible design and implementation of a price control remedy applying to funeral directors. Our thinking, and the suggestions in this working paper, are without prejudice to the outcome of our assessment of whether there are any AECs in relation to the services provided by funeral directors and any detrimental effects on customers resulting from those AECs.
8. The consideration of possible price control remedies for crematoria is not covered in detail in this paper. We propose to distinguish between remedies that may be needed in relation to funeral directors and those that may be needed in relation to crematoria, given the potential distinction between the characteristics of each sector and the different AECs we may find. We are considering possible price control remedies for crematoria in a separate working paper.<sup>3</sup>

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<sup>1</sup> [CC3 \(Revised\)](#) Guidelines for market investigations: Their role, procedures, assessment and remedies paragraph 330.

<sup>2</sup> [CC3 \(Revised\)](#) paragraph 326

<sup>3</sup> Working paper: Remedy options for regulating the price of crematoria services

9. As stated above (paragraph 4), a price control remedy as outlined in this paper could form part of a broader package of remedies. Such a package may include:
  - (a) Information and transparency remedies<sup>4</sup> to improve the preparedness of customers ahead of the point at which the funeral needs to be organised and to make it easier for customers to make the best choices for themselves;
  - (b) quality regulation<sup>5</sup> on the provision of funeral directors' services;
  - (c) local authority arrangements which provide local residents with access to funeral director services at a fixed and/or discounted rate below, what may otherwise be, the typical local price.<sup>6</sup>
10. The rest of this paper covers:
  - (a) The criteria that the CMA applies in considering remedies in market investigations (paragraphs 12-23)
  - (b) The possible aims and overall approach taken to price control remedy options for at-need funerals (paragraphs 24-26)
  - (c) Key design considerations for price control options (paragraphs 27-80).
  - (d) An initial consideration of how price control options might be implemented, monitored and enforced (paragraphs 81-100)
  - (e) Invitation to comment on this proposed remedy (paragraph 101)
11. We welcome views on the evidence, analysis and our current thinking on a price control remedy, as set out in this working paper.

## **Framework for consideration of remedies**

12. If we find that there is any adverse effect(s) on competition (AEC), we are required to decide the following questions:<sup>7</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;

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<sup>4</sup> [Information and transparency remedies](#)

<sup>5</sup> [Quality regulation remedies](#)

<sup>6</sup> Working paper: Local Authority tendering remedy proposal

<sup>7</sup> Enterprise Act 2002, section 134(4).

- (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.
- 13. A detrimental effect on customers is defined as one taking the form of:<sup>8</sup>
  - (a) Higher prices, lower quality or less choice of goods and services in any market in the UK (whether or not in the market to which the feature or features concerned relate); or
  - (b) Less innovation in relation to such goods or services.
- 14. 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>9</sup>
- 15. 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>10</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>11</sup>
- 16. 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. 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>12</sup>
- 17. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including their practicability.<sup>13</sup> The effect of any remedy is always uncertain to some degree.

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<sup>8</sup> Enterprise Act 2002, section 134(5).

<sup>9</sup> Enterprise Act 2002, s 134(6).

<sup>10</sup> [CC3 \(Revised\)](#), paragraph 329.

<sup>11</sup> Enterprise Act 2002, s134(7); [CC3 \(Revised\)](#) paragraph 329.

<sup>12</sup> [CC3 \(Revised\)](#), paragraphs 330 and 333.

<sup>13</sup> More detail on how the CMA may assess effectiveness is in [CC3 \(Revised\)](#) from paragraph 334.

18. Assessing the effectiveness and practicability of any remedy may involve the consideration of several dimensions.<sup>14</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.
19. The CMA in considering the reasonableness of different remedy options will have regard to their proportionality.<sup>15</sup> The CMA's assessment of proportionality will depend on the particular facts and circumstances of a case. In making an assessment of proportionality, we will be 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>16</sup>
20. 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.
21. In reaching a judgement 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>17</sup>
22. 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:

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<sup>14</sup> CC3 (Revised), paragraphs 335-341.

<sup>15</sup> More detail on how the CMA may assess proportionality is in CC3 from paragraph 342.

<sup>16</sup> CC3 (Revised), paragraphs 342 to 344.

<sup>17</sup> CC3 (Revised), paragraphs 348 to 353.



- (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>18</sup>
23. The CMA's updated Market Investigation guidance allows the CMA greater time to consider potential remedies, and earlier discussion with parties.<sup>19</sup> However, the consideration of any possible remedies is always contingent on an AEC finding having been reached.<sup>20</sup>

## **Aims and overall approach to price control remedy options**

24. In the event that the CMA finds an AEC, and any resultant or expected detrimental effects on customers in relation to funeral director services, we consider it likely that the primary aim of price control remedy options will be to provide either or both of:
- (a) An initial intervention to 'reset' high prices closer to competitive levels, and
  - (b) an ongoing restriction on future price increases so that prices remain closer to a competitive level.
25. Price controls could work in combination with the other remedy measures to promote information availability and transparency and to help empower people in their interactions with funeral directors. They could help to reduce consumer detriment, indirectly, by influencing people's expectations about typical funeral prices and helping to inform their understanding of value for money.
26. Moreover, given the possibility that other remedies may be incapable of addressing any AECs in their entirety, or within a reasonable period of time, a price control remedy may be required to directly restrict the detriment arising from any AECs.

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<sup>18</sup> [CC3 \(Revised\)](#), paragraphs 354 to 369.

<sup>19</sup> Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (Revised July 2017) (CMA3).

<sup>20</sup> CMA3, paragraph 3.50.

## Remedy design issues

27. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including their practicability. The effectiveness of any remedy is always uncertain to some degree. In evaluating the effectiveness of potential remedies, the CMA will consider the risks associated with different remedy options and will tend to favour remedies that have a higher likelihood of achieving their intended effect.<sup>21</sup> The likelihood of effectiveness, and any associated risks, are a key consideration during the remedy design process.

### ***Assessment of price control options***

28. In the Statement of issues<sup>22</sup> we outlined a number of possible approaches to price control which included:
- (a) Cost orientation condition: this would require firms to set prices which reflect the costs incurred in providing the service, through imposition of a cost orientation obligation.
  - (b) Profit margin/rate of return allowance: this would establish a fair profit margin and/or rate of return on invested capital.
  - (c) Safeguard cap on essential services: this would involve enforcement of a ceiling on the allowable price for the essential elements of a funeral i.e. on those services which all customers require when they purchase a funeral or cremation. All customers purchasing a funeral or cremation would pay a price at, or below, the safeguard cap level for these essential services.
  - (d) Safeguard cap on a specific package: a price ceiling for a particular, discrete package (a “benchmark product”) would be established.
29. In developing our thinking regarding the potential for price regulation in this sector, we have taken into account various information including the responses we received to the Statement of issues<sup>23</sup>, evidence provided during hearings and roundtables<sup>24</sup> and also submissions from funeral directors on this subject. This has informed our thinking, in particular with regard to design choices for any potential price control remedy and also in our

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<sup>21</sup> Paragraph 4.15-6, Market Studies and Market Investigations: Supplemental guidance on the CMA’s approach

<sup>22</sup> Paragraph 127, Funeral directors and Crematoria services market investigation, [Statement of issues](#)

<sup>23</sup> [Responses to the issues statement](#)

<sup>24</sup> [Hearing and roundtable summaries](#)

assessment of the risks and mitigation of unintended distortions to market outcomes (paragraphs 75-77).

30. We have considered whether a cost-based approach, similar to that commonly applied to the regulation of utility prices such as water or energy, would be appropriate. We do not propose to adopt this approach because we think it is likely to be impracticable for a number of reasons, including the following:
- (a) The funeral directors' industry is fragmented, consisting of an estimated 2,302 companies, of which over 70% are small businesses operating with/from one branch.<sup>25</sup> This introduces risks related to obtaining sufficient and accurate data to enable us to establish the efficient level of costs for the relevant products and services provided by all funeral directors.
  - (b) Funeral director services are a differentiated product, with the products and services purchased, reflecting to some degree the wishes of the deceased and the bereaved. A cost-based approach tends to be most effective when there is a standard (homogeneous) product or service to be regulated.
31. We are disinclined to pursue options, such as requiring funeral directors to comply with a broad cost-orientation obligation or rate of return allowance. These options create a risk that over-investment or cost inefficiencies are directly passed onto customers. This approach is unlikely to achieve the aim of re-setting high prices and influencing consumer expectations about typical funeral prices.
32. At this stage, we consider that it may be appropriate to adopt an approach such as those that fall broadly within the description of a "safeguard" or "benchmark" cap (ie option 28(d) above). This approach would draw on evidence of prices charged by some funeral directors to determine a maximum pricing level for a standardised funeral package of products and services. This should ensure consumers are protected from high prices which exceed the level of the cap. A safeguard cap does not generally seek to require prices to be set precisely at the level of efficient costs. It is therefore typically accompanied by measures which create scope for competition to take place at prices below the cap, such as initiatives to strengthen demand-side pressures, for example by helping consumers to shop around or to consider lower cost options.

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<sup>25</sup> Source: GrowThink Solutions

33. We are also considering alternative and/or complementary remedies such as the local authority procurement model, which provides local residents with access to funeral director services at a fixed and/or discounted rate below the typical local price. Depending on how it is implemented, this remedy could provide similar benefits to those we consider would be delivered by a price control remedy, such as helping to inform and influence customers' expectations of typical funeral prices.

### ***Specification of a price control remedy***

34. There are a variety of ways in which a control that constrains the price of a standard 'benchmark' package of funeral services could be specified. We have considered the following issues related to the design of this remedy option:
- (a) Which providers of funeral director services should be subject to any price control;
  - (b) which of the services or products provided by funeral directors should be included within the scope of any price control;
  - (c) what should be the geographic scope of any price control – for example, should any cap vary according to the location of the funeral director;
  - (d) how should the level of the price control be determined and updated; and
  - (e) how could the price control be designed to mitigate any unintended distortions to market outcomes that may arise from the introduction of price regulation.

### ***Which providers would be subject to price control***

35. When designing a price control remedy, we need to decide which providers it would, or would not, apply to. The considerations concern whether to include all providers of at-need funerals, or only a subset of providers and if so, the basis for distinguishing between them.
36. Our thinking is primarily focused on addressing the degree and nature of any consumer detriment arising from any AECs. In addition, we must ensure that any price control remedy would be effective and proportionate (as outlined in paragraph 19). Our considerations are likely to include:
- (a) The extent to which demand-side factors, such as the challenging circumstances in which many consumers are making choices about

funerals, are relatively universal. This may suggest that any price control remedy should be applicable to all funeral directors.

- (b) Is evidence on outcomes consistent across all funeral directors – for example, is there evidence of a correlation between measures of size (revenue/number of branches/number of employees) and higher prices being charged to customers? The initial evidence we have gathered on prices<sup>26</sup> to date suggests that high prices have not been confined to the largest providers.
  - (c) Whether or not there is evidence to suggest that higher prices are associated with a higher cost base and the extent to which any price increases have occurred in response to changes in the cost base of providers. The profitability analysis we have undertaken to date suggests that in our sample of 13 of the largest funeral directors, returns substantially in excess of the cost of capital have been made in the last five years and that high profit margins have been achieved both by funeral directors with a high average revenue per funeral (ARF) and those with lower ARF.<sup>27</sup>
  - (d) The extent to which a price cap applied to a subset of providers could lead to a reduction in the prices of other providers not subject to such a cap. For example, is there an ‘umbrella’ effect whereby smaller providers might reduce their prices following a price reduction by larger providers. In addition, would setting a price cap on a subset help to inform customer expectations on prices more generally?
37. There are also practical considerations relating to the size and number of providers that are subject to any price control – for example, we will consider:
- (a) Whether it would be disproportionately costly or impractical to implement, monitor and enforce a price control in relation to all providers in a highly fragmented sector such as funeral director services (2,302 companies, of which over 70% can be considered to be small businesses which operate with/from one branch).
  - (b) Whether there is any relevant difference, in terms of potential unintended distortions to market outcomes that might occur between providers of different sizes, for example the exit of smaller funeral providers due to increased compliance requirements and related costs.

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<sup>26</sup> Working papers: Funeral directors – price dispersion analysis and Funeral directors – pricing levels and trends

<sup>27</sup> Working paper: Funeral directors profitability analysis

### *Our current thinking*

38. Our current thinking is that any price control should apply to all providers of funeral director services i.e. anyone whose business consists of or includes the arranging and conducting of funerals. The evidence we have gathered so far suggests that demand-side factors, such as the challenging circumstances in which people organise a funeral and the impact this might have on their purchasing choices, are relatively universal.
39. We would, however, welcome views on whether there are any reasons to limit the application of price control regulation, for example to exempt certain providers and, if so, on what the criteria for exemption should be.

### ***Scope of products included within the price cap***

40. Price controls can be applied to the prices of individual products/services or to combinations or packages. The products and services which comprise a funeral may vary from customer to customer and for some people the requirement for customisation is an important factor.
41. We have considered the option of price control regulation which would apply to the prices of all individual products and services provided by funeral directors. Whilst in principle this could offer a comprehensive solution to any AECs or customer detriment, we are currently disinclined to pursue this approach on the basis that a remedy focused on a package of funeral products and services is likely to be more practical to implement, monitor and enforce and to be a more proportionate approach.
42. With this in mind, we are considering two broad approaches to specifying the product scope of any price control:
  - (a) Specifying a benchmark funeral package, which all providers who are subject to the price control regulation would be required to offer and setting a maximum price for this package, or
  - (b) capping the average revenue of all funerals offered by a provider in a specified period.
43. We have considered some of the advantages and disadvantages of each option including:
  - (a) The ease with which we can communicate any price regulation to consumers, funeral directors and other interested parties, for example consumer groups;

- (b) how the choice of product scope may interact with the process of helping to inform consumers' expectations of value for money (paragraph 25) and in comparing and selecting a funeral director;
- (c) the market coverage of any defined product and whether effectiveness of the price control would be enhanced if a substantial proportion of the sector offers the benchmark package, and
- (d) the risk/s of circumvention and unintended distortions to market outcomes.

### *Capping the price of a benchmark funeral package*

44. One option for implementing a price control would be to specify a benchmark funeral package of products and services and to set a maximum price for this. There are two main options for specifying such a benchmark:
  - (a) Identifying a baseline, minimum core set of funeral services (a "Baseline Funeral"), that most customers require and regulating the price of this package, while allowing customers to 'add on' other services;
  - (b) identifying a commonly purchased combination of funeral services (a "Standard Funeral") – which would be more extensive than the Baseline Funeral specified in (a) and regulating the price of this package.
45. A benchmark price control is usually most effective when the price-controlled product (funeral package) represents a large proportion of sales in a market and if the prices of non price-controlled products remain closely related to the benchmark product/package. <sup>28</sup>
46. In order to determine what the constituent elements of a benchmark funeral package could be – under either option – we have referenced evidence from existing publicly available funeral package data, consumer surveys and evidence provided by trade associations and funeral directors.
47. We are also considering other relevant evidence to determine whether some products or services should, or should not, be included in a price-regulated funeral package. For example, whether there is any evidence of declining or low levels of demand for particular products or services, such as embalming or use of limousines, and therefore should such a product/service be excluded from a benchmark package.

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<sup>28</sup> Paragraph 91 (c), [CC3 \(Revised\)](#)

48. In considering the approach of a benchmark package, we are mindful of the requirements of some customers for customisation and aim to ensure that the funeral provider market retains the incentives to innovate, differentiate, and offer a full range of products and services as demanded by the consumer.
49. In order to meet the demands for customisation, customers would need to be able to add-on, amend or remove products or services. In this situation, it would need to be clear to customers that a customised package would no longer be the price-regulated package subject to a maximum price (ie if it contained extra services, for example, multiple limousines, then the price could exceed the specified price cap to reflect the cost of these extra products/services). However, help for consumers in deciding whether to choose these extra services could be provided by the “independent platform” comparison tool that we are considering should be developed as part of our measures to enhance information transparency.<sup>29</sup>
50. A benchmark package with a maximum price is likely to be easier to communicate to consumers and to inform their expectations of price, when compared to the option of a cap on average revenue. In addition, it should facilitate ease of comparison on the basis of price across providers. We can foresee the price of the benchmark package being published on the “independent platform” comparison tool. This approach would allow consumers, rivals, local authorities and consumer groups, as well as the CMA, to assess relatively easily whether a particular funeral director was complying with the maximum price regulation.
51. While this approach has a number of strengths, partly related to its transparency to consumers, a potential risk which may occur as a result of implementing a benchmark package with a stated maximum price is that the price of this package could become a focal point around which prices might converge. This would have adverse effects for consumers if funeral products and services were not priced competitively and if lower-price providers increased prices toward the level of the benchmark product. This risk highlights the importance of taking complementary actions to stimulate competition and choice at prices beneath the level of the benchmark price cap.

#### *Capping the average revenue per funeral*

52. An alternative approach could be to use average revenue per funeral and to set a maximum level for this. This would avoid the need for a funeral package

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<sup>29</sup> Independent platform is discussed in the [Information and transparency working paper](#)



to be precisely defined as it would cap the average price that can be charged for funerals by a funeral director. The price regulation would be specified to apply across a 'basket' of products and services (the various types of funeral provided by funeral directors), with the average price of funerals provided in a period (for example one year) required to be below a maximum level.

53. The calculation methodology would need to be clear and detailed, with any exemptions from the calculation clearly prescribed, for example revenue would need to be adjusted to exclude disbursements or revenue relating to other services which are considered outside the scope of funeral director services, for example memorials, insurance services or other income items.
54. We consider that it would be difficult for consumers or other parties, such as consumer groups, rivals or local authorities, to determine whether a particular funeral director had complied with the price control regulation under this approach and it may have a lesser impact informing customer's expectations about funeral prices. In addition, we foresee that compliance, monitoring and enforcement would be challenging for both the CMA and/or a new regulator and also funeral directors. In particular, customer choices affecting the mix of types of funeral provided, for example the proportion of simple or direct cremations, or of more complex funerals, in a given period could have a distortive effect on average revenue.
55. However, an average revenue cap might better facilitate customer requirements for customisation with the protection of a price control in place. It may also reduce the risk of a benchmark package potentially becoming a focal point for pricing and could provide greater flexibility for any shifts in demand between types of funeral products/services or packages.

#### *Treatment of disbursements*

56. Disbursements are third party costs generally passed onto customers by funeral directors. We are considering whether any disbursement costs should be included within the scope of any price regulation.
57. We suggest that disbursement costs would not be included within a benchmark funeral package. However, we are considering whether there should be a requirement for funeral directors to pass through these charges to customers at cost ie without a mark-up or profit margin added. This would require funeral directors to pass on disbursement costs, such as burial fees, cremation fees, flowers and stationery etc at the price incurred by the funeral director.
58. We are separately considering the possibility of price control regulation for crematoria (paragraph 8). A requirement for cremation fees to be passed

through to customers at cost, regardless of the type of funeral package purchased by the customer, would help to ensure that the benefits of any price regulation on cremation services would be directly passed onto customers.

### ***Our current thinking***

59. Our current thinking is that a maximum price would be applied to a defined benchmark package of funeral products and services. This benchmark package would be required to be offered by all funeral directors in the sector who are subject to the price control regulation.
60. Table 1 (shown below) describes some possible elements which could be included in a benchmark package. We consider that these are the most commonly purchased funeral products and services. We would welcome views on this proposed benchmark package, in particular:
- (a) Are there any products or services which are not currently included in the suggested benchmark package (Table 1) which should be included? What is the evidence to support this view?
  - (b) Are there any products or services which have been included in the suggested benchmark package (Table 1) which should not be included? What is the evidence to support this view?
  - (c) Do you consider that there is evidence to suggest a lower or declining demand for any products or services in the suggested benchmark package, in particular we seek views on the use of limousine/s and embalming?
  - (d) What is your view on including or excluding time-based restrictions on certain services, for example should collection, transportation of the deceased be available 24 hours a day, seven days a week or should viewing of the deceased at the place of storage/funeral director's premises be limited to "office hours" such as 8am to 6pm. Also, should there be any restrictions on the route for the funeral procession?
  - (e) Are there any funeral director providers for whom the suggested "standard" benchmark funeral package (Table 1) would not be a suitable product/service to offer, for example a funeral director offering highly specialised or unique services?

Table 1

**Suggested benchmark funeral package for consultation**

Collection and transportation of the deceased (no time restrictions)  
Storage of the deceased  
Care of the deceased  
Customer advice and support (may also be referred to as funeral director contact)  
Legal and administrative services (including completing required documentation, liaison with third parties such as coroner)  
Managing arrangements relating to burial, cremation, cemetery, church, ceremony officiant  
Date and time flexibility for funeral service  
Arranging payment of third-party disbursements  
Viewing of the deceased (suggested during the hours 8am-6pm)  
Dressing the deceased in their own clothes or gown  
Provision of a 'standard' coffin  
Provision of hearse and personnel  
Choice of route for funeral procession (within defined radius)  
One limousine  
Embalming

- (f) We are also considering whether an alternative approach, in particular a cap on average revenue per funeral, could be effective in addressing any AECs and customer detriment, whilst also addressing unintended market distortions such as the risk of a focal point for prices. Do you think this could be a better approach for price regulation?

***Setting and updating the level of any price control***

61. We are considering whether the level of any price control could be set by reference to the prices of products and services which are comparable to the suggested benchmark package. We have collected some evidence on prices during this investigation and are analysing this data to help identify what additional data would be required to decide on the level of any initial price control. We are likely to request additional information shortly from relevant providers.
62. We intend to use the pricing data collected to understand the range of prices across the UK. This could provide indicative levels for a reference point for a price-controlled benchmark package, such as for example, median price, 25th percentile, 60th percentile.
63. We are also considering whether the pricing data we have collected could be supplemented or cross-referenced to other pricing information. This could include pricing information from local authorities who use procurement processes to achieve preferential/discounted prices for funeral services

accessible for their residents<sup>30</sup> or indicators of price, such as average revenue per funeral/type of funeral.

#### *Determining the initial level*

64. We are examining evidence on prices and will consider whether the data we have collected could provide a reference point to set an initial maximum price for a benchmark package. We will assess the time period the prices relate to and whether any adjustment is required to update them to estimate present value. In addition, we will assess the extent to which our data sample reflects the characteristics of the funeral director sector, for example geographic coverage or size of funeral director. We shall also consider whether adjustments are required to the pricing data in order to reflect any evidence regarding inefficiency and/or lack of price competition between firms.
65. We are considering if (and how) to reference any price or revenue data to cost base and/or profitability data in order to ensure that any price control provides sufficient incentive and ability for market participants to continue to offer services in this sector.

#### *Level of the price control in the future*

66. The process of competition usually enables market participants to adapt to changes in a market. For the period that a price control regulation is in place, we need to consider incorporating measures to adjust the price of the benchmark package in future to ensure the price remains at an appropriate level, while protecting consumers against excessive increases.
67. This may involve indexing the benchmark package price to an inflation measure, for example the consumer prices index (CPI) or index of labour costs. Alternatively, we may consider that the set price does not need to be indexed/increased for a period of time or that a deflating adjustment is required. We will further assess these options during the process of examining pricing and profitability evidence.
68. We have considered whether the local authority procurement model (paragraph 9(c)) could provide a benchmark against which to set the price in future. To date, a relatively small number of these arrangements are in place, but in future, wider adoption of this model across the UK could provide a comprehensive data set of prices.

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<sup>30</sup> Working paper: Local Authority tendering remedy proposal

### ***Geographic scope of any price control***

69. There are two main considerations in relation to the geographic scope of a price control.
- (a) Whether the requirement for price control regulation should apply across the UK, or whether it should apply at a regional or devolved nation level? The basis for the approach could be determined by reference to any evidence of differences in detrimental effects for customers and/or AECs and other factors such as any difference in the regulatory regimes of the devolved administrations.
  - (b) Whether the maximum price of the price control (paragraph 64) should be set at a national (ie one price across the UK) or regional level (different prices across the UK). We are analysing the pricing data we have collected to assess the extent to which prices significantly vary based upon the geographic location of the funeral director. We may also reference the cost base and/or profitability of providers across the UK in determining the appropriate approach.
70. While the demand-side factors affecting competition appear likely to affect all of the UK, the CMA is mindful of the devolution of powers to Scotland, Wales and Northern Ireland and will actively engage with each of the devolved administrations in developing its remedies. In making recommendations to the Scottish Government, the CMA will take account of the Burial and Cremation (Scotland) Act 2016 and consider how any price control regulation should interact with the requirements of the 2016 Act.
71. In considering whether the level of a price control should be set a regional or national level, we will take into account the risk that unintended market distortions may arise due to variation in the level of a price control across the UK, particularly at the border of geographic areas or regions if different maximum prices have been set. In addition, we will consider the impact on the effectiveness of compliance, monitoring and enforcement for both the CMA and/or a new regulator and funeral directors.

#### *Our current thinking*

72. Our current thinking is that any price control regulation should apply to all providers of funeral director services across the UK.
73. We suggest that there should be one maximum price for a defined benchmark package for all providers of funeral director services across the UK. This

should reduce the risk of market distortion which could occur if there were different maximum prices in different regions. In addition, it should be a more practicable approach for the purpose of implementation, monitoring and enforcement.

74. We would welcome views regarding how might the Burial and Cremation (Scotland) Act 2016 interact with any price control regulation implemented by the CMA, or a new regulator and whether the price level of any price-controlled package should be set as one price across the UK.

***Designing a price control to mitigate any unintended distortions to market outcomes***

75. The CMA has considered a number of potential unintended distortions to market outcomes, and also the potential mitigation options, when evaluating the options for a price control remedy. These include:
- (a) The risk that an effective compliance and monitoring regime cannot be implemented across all providers of funeral director services due to the fragmented nature of the sector and the large number of small businesses.
  - (b) The risk that the maximum price level becomes a focal point and that some providers increase prices to the level of the price control rather than setting an efficient price, which could be significantly below the maximum price set.
  - (c) Specification risks which could arise if the price control cannot be designed with sufficient clarity to provide an effective basis for monitoring and compliance.
  - (d) Price controls can directly override market signals which may result in distortion risks, such as a reduced incentive for participants to compete.
  - (e) Circumvention risks which could occur if the price control creates incentives for providers to make changes to other products/services, including a reduction in quality.
  - (f) Increased compliance costs or inability to comply with price regulation could lead to the exit of some market participants or result in higher barriers to entry. This may have adverse effect on competition or distort the market in an unintended way.

76. The likelihood of occurrence, significance of the consequences and mitigation options for such risks will be considered and managed through the design and consultation process. We have considered the following mitigation options:
- (a) In assessing the ability to effectively monitor and enforce any price control regulation, we may consider whether compliance requirements should vary based upon the size of the funeral director, for example exemption or simplified reporting for the smallest funeral directors.
  - (b) The risk that the maximum price becomes a focal point could be addressed by opting for an approach based on capping the average revenue per funeral of funeral providers (paragraph 52). Alternatively, this could be addressed by setting the level of a price cap at a relatively low price point which would reduce the number of providers with flexibility to 'price up' to the level of the price cap from their existing price levels, or by remedies, such as improving information transparency which retain incentives to offer funeral services at prices below the cap.
  - (c) In considering specification and circumvention risks, we may consider the introduction of sub caps, or cost reflectivity, to manage the risk that the prices of products and services outside of the price control scope increase above the competitive level. Cost reflectivity would compel funeral directors to align the price of disbursements, or other products and services outside of the scope of the price control, to costs.
  - (d) Market distortion risks, for example that providers are unable to earn a normal rate of profit which may result in higher barriers to entry, can be addressed by assessing the level of a price control in consideration to costs and/or profitability (paragraph 65).
  - (e) In order to address the risks of circumvention, we would consider the possible ways in which a firm's incentives might be affected and undermine the intended impact of a price control remedy. For example, the possibility of an increase in sales of more expensive bespoke funerals (products and services outside of the benchmark package) which does not best match the customer's needs. The information transparency remedies and the "independent platform" comparison tool under consideration, could help to mitigate the risks of inappropriate upselling and help ensure that a benchmark package is sufficiently promoted. In addition, there is a risk of a reduction in the volume of sales of 'simple' funerals or other lower-cost options. We intend to engage with funeral directors, trade associations and crematoria providers to assess this risk and the mitigation options.

- (f) The other proposed remedies should help to address some of the circumvention risks, for example quality<sup>31</sup> and compliance regulation which are under consideration, should decrease the possibility of a reduction in the unobserved quality elements of a funeral. In addition, the information and transparency remedies<sup>32</sup> which are under consideration aim to help encourage competition in the market, improve the preparedness of consumers ahead of the point of need (arranging a funeral) and may help consumers to make better choices.
- (g) The risk that price, or other proposed compliance regulation, leads to increased costs and the potential for market exit of some providers could be addressed by considering the inclusion of a de minimis threshold or other exemption criteria for some funeral providers. We may also consider simplified compliance reporting requirements for some providers.

77. As well as managing the risks of unintended consequences, we will also have regard to the benefits that may arise from the 'intended' consequences such as lower prices for consumers as well as the scale and impact of any AEC and resulting customer detriment we may identify.

### ***Road testing the design of any price cap***

- 78. Testing proposed remedies with consumers and refining the remedy design can boost effectiveness and provides an initial assessment of whether a price control remedy might meet its objectives (paragraphs 24-25).
- 79. A consumer testing process could be useful for informing some of the detailed design and implementation issues and how these may affect the performance of a price control remedy. This may be conducted with groups of individual consumers, with consumer interest groups and other stakeholders. We are considering if and how we might conduct a consumer testing process or other research process, such as referencing academic papers on relevant subjects.
- 80. We would like to engage with a range of stakeholders during the consultation process and expect that this would form part of the testing process for the thinking outlined in this working paper.

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<sup>31</sup> [Quality regulation remedies](#)

<sup>32</sup> [Information and transparency remedies](#)



## Remedy implementation, monitoring and enforcement

81. A remedy should be capable of effective implementation, monitoring and enforcement within a reasonable period of time.
82. When taking remedial action, the CMA may act itself through exercising its order-making powers against, or through accepting undertakings from, any 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>33,34</sup>
83. The CMA will think carefully about the practicality of different approaches to remedy implementation, including how any remedies will be monitored and enforced. In considering the introduction of price regulation we shall consider a range of issues including the following:
  - (a) Whether price controls should be introduced by the CMA, or by recommending that the government set up a new regulator;
  - (b) if the CMA takes action itself, whether this would be best done by means of accepting undertakings or making an Order;
  - (c) whether to allow time for any required compliance implementation to be undertaken, for example changes to funeral director's internal processes or sales systems, before the commencement date of an Order;
  - (d) what processes (eg compliance reporting for funeral directors) should be put in place to ensure effective monitoring and enforcement;
  - (e) implementation costs, and
  - (f) timelines and possible end date for the termination of an Order.

### ***Who is best placed to operate any price control regime***

84. The working paper on quality regulations considers the establishment of an appropriate body, a suggested new sector regulator, to monitor and enforce quality standards for 'unobserved' services. We would expect that a new regulator would also be given responsibility for the setting, monitoring and enforcement of any price control regulation/s for this sector in the longer term.

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<sup>33</sup> Such recommendations do not bind the person to whom they are addressed, although the UK Government has said that it will respond to any recommendation made to it within 90 days of publication of the CMA's final report.

<sup>34</sup> [CC3 \(Revised\)](#), paragraph 327.

85. However, we are also mindful of the need to achieve a timely solution to address any AECs and/or detrimental effects on customers that we may find, and of the parliamentary time that may be needed to establish a regulator. We are therefore considering whether to put in place a framework for price control using the CMA's powers, pending the introduction of a long-term regulatory solution.
86. Our current thinking is that, in order to ensure that any customer detriment is addressed in a timely manner, price control regulation would initially be included within an Order made by the CMA. The main advantage of using the CMA's Order making powers is that this will enable a more-timely implementation of any price control regulation, rather than awaiting the establishment of a new regulatory body. In addition, the CMA could rely on its relevant monitoring and enforcement experience to establish processes to implement a price control remedy in the short-term.
87. We would also consider whether an external body – similar to a Monitoring Trustee<sup>35</sup> - should be appointed to support the CMA and to provide additional resource during the implementation period. This may be necessary due to the large number of funeral directors which may be included within the scope of any regulation.
88. The transition process between the CMA and a new regulatory body, and the interaction between any short and longer-term regulations, will be carefully considered.

### ***Legal implementation of remedy***

89. When taking action itself, the CMA may act through exercising its order-making powers or through accepting undertakings from parties. Alternatively, or in addition, the CMA may recommend that remedial action should be taken by others, such as government, regulators and public authorities.<sup>36</sup>
90. We do not think that the implementation of price control regulation through the use of undertakings is likely to be appropriate due to the difficulty and impracticality of negotiating and securing undertakings with a very large number of funeral directors across the UK. An Order also has the advantage that it would apply consistently across the defined category of funeral directors whom it would cover.

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<sup>35</sup> Paragraph 26, Annex B, [CC3 \(Revised\)](#)

<sup>36</sup> Paragraph 88, [CC3 \(Revised\)](#)

91. We therefore consider that any action by the CMA is likely to be taken by means of an Order.
92. In considering potential recommendations, the CMA is mindful of the devolution of powers to Scotland, Wales and Northern Ireland. The CMA will engage with each of the devolved administrations as well as the UK Government in developing its remedies. In making any 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.

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

93. An effective remedy should be capable of effective implementation, monitoring and enforcement. The operation and implications of the remedy need to be clear to the persons to whom it is directed and also to other interested persons (including consumers and other businesses that may be affected by the remedy).<sup>37</sup>
94. There are a number of enforcement and monitoring issues to be considered during the design and consultation process, including:
  - (a) The large number of funeral directors in the UK and the significant differences in size of their operations (many small, owner-managed businesses) could lead to practical difficulties in effective monitoring. We also explained in paragraphs 50 and 54 that different types of price control may make it more or less easy for consumers or competitors to monitor compliance by other funeral directors.
  - (b) If reporting is required to the CMA or a regulator, should the reporting requirements be the same for all providers? For example, should there be additional reporting requirements for larger funeral directors or fewer/simpler reporting requirements for smaller funeral directors.
  - (c) Designing an effective communication strategy to ensure that consumers, funeral directors and relevant third parties understand their rights and responsibilities under any orders issued by the CMA. We will also consider how to ensure that a benchmark package is sufficiently promoted and visible to consumers.

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<sup>37</sup> Paragraph 336, [CC3 \(Revised\)](#)

### ***Implementation costs***

95. The introduction of a price control remedy is likely to result in implementation costs (for example, modifying sales systems), ongoing compliance and monitoring costs for funeral directors.
96. In addition, there are monitoring and enforcement costs for the CMA and government. We are considering if a new regulator is established, how this would be funded in addition to other new regulatory costs for the CMA, government or other third parties. This could be through general taxation, a levy on funeral directors or a licence fee (if a licensing scheme is introduced).<sup>38</sup>
97. We shall consider these costs during our assessment of proportionality of a proposed price control remedy.

### ***Timing and end date for Order***

98. Remedies are designed to have ongoing effects on business conduct throughout the period they are in force, and the duration of these measures is a material consideration.<sup>39</sup> As set out in the aims (paragraph 24), it is intended that a price control remedy should provide an ongoing restriction on future, above inflation, price increases, in addition to remedying any present detrimental effects on customers. Therefore, any price control regulation should remain in force for an appropriate period of time.
99. Our current thinking, as discussed in paragraph 85, is that any price control regulation should be initially introduced and implemented by the CMA. It is intended that responsibility would then transition to the proposed new regulator.
100. We consider that an Order would have a defined end date and could remain in effect for a period of eg between five and seven years.

### **Invitation to comment on this proposed remedy**

101. We would welcome views on the proposals outlined in this working paper and any other comments on the proposed price control remedy. In particular we would welcome comments on the following questions.

Aims and approach of a price control remedy

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<sup>38</sup> [Quality regulation remedies](#)

<sup>39</sup> Paragraph 45, [CC3 \(Revised\)](#)

- (a) Do you agree that the introduction of a price control likely to be an effective solution to remedy any AECs and any resultant, or expected, detrimental effects on customers should they be found in this market investigation?
- (b) Do you agree that the introduction of a price control remedy to be a necessary and proportionate solution (paragraph 19) to remedy any AECs and any resultant, or expected, detrimental effects on customers should they be found in this market investigation?

#### Price control design considerations

- (c) Do you agree that all funeral directors should be subject to a price control remedy (paragraph 38)?
- (d) Do you think there is a requirement to limit the application of any price control regulation to exempt certain providers and if so, what should the criteria for exemption be (paragraph 39)?
- (e) Do you agree or disagree with the suggestion that a maximum price could be applied to a benchmark package of products and services (paragraph 59)?
- (f) Do you agree with the suggested products and services within the proposed “standard” benchmark funeral package (paragraph 60)?
- (g) Are there any funeral director providers for whom the suggested “standard” benchmark funeral package (paragraph 60(e)) would not be a suitable product/service to offer, for example a funeral director offering highly specialised or unique services?
- (h) Do you consider that there is evidence to suggest a lower or declining demand for any products/services in the suggested benchmark package, in particular we seek views on the use of limousine/s and embalming (paragraph 47)?
- (i) What is your view on including or excluding time-based restrictions on certain services, for example should collection, transportation of the deceased be available 24 hours a day, seven days a week or should viewing of the deceased at the place of storage/funeral director’s premises be limited to “office hours” such as 8am to 6pm. Also, should there be any restrictions on the route for the funeral procession (paragraph 60(d))?

- (j) Do you consider that we should include a requirement for cost reflectivity for all disbursement costs within any price control regulation? If not, are there particular disbursement costs, for example cremation costs, which should be included (paragraph 57)?
- (k) Alternatively, do you think that price control cap on average revenue per funeral, would be as effective in addressing any AECs and customer detriment, whilst also addressing unintended market distortions such as the risk of a focal point for prices (paragraph 60(f))?
- (l) Do you think the same approach to the design of a price control is required across the UK, or whether there should be any variation at a regional or devolved nation level (paragraph 69(a))?
- (m) Do you think that one maximum price should be set for a benchmark package across the whole of the UK? Alternatively, what are your views on setting different regional or devolved nation prices (paragraph 69(b))?
- (n) What are your views on the interaction of the Burial and Cremation (Scotland) Act 2016 with the proposal of price regulation in the UK (paragraph 74)?

#### Implementation, monitoring and enforcement

- (o) What is your assessment of whether the option of setting a maximum price for a benchmark package of products/services (paragraph 60) is capable of effective;
  - (i) implementation?
  - (ii) monitoring?
  - (iii) enforcement?
- (p) Do you think that compliance reporting requirements to the CMA or a regulator, should be the same for all funeral directors (paragraph 94(b))?
- (q) Do you have any views or suggestions on designing and implementing an effective communication strategy to ensure that consumers, funeral directors and relevant third parties understand their rights and responsibilities if price regulation is introduced in the funeral industry? In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 94(c))?

- (r) What preparation would be required and how long do you think funeral directors might require in order to prepare for the implementation of any price control regulation?
- (s) What would be the likely costs of implementation, monitoring and enforcement for funeral directors?
- (t) Do you consider an initial duration of five to seven years is an appropriate period for the implementation of a price control remedy and achievement of its aims (paragraph 24)?
- (u) Do you consider there to be other risks or options for mitigation which we have not considered (paragraphs 75-77)?

Please provide any other comments or questions.