

7 November 2019

## **SUBMISSION BY THE CO-OPERATIVE GROUP**

### **Discussion of potential non-pricing remedies**

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#### **A INTRODUCTION**

- 1.1. Our Response to the CMA's Issues Statement sets out why price control remedies would be counter-productive and disproportionate. However, Co-op has always been clear that there is scope for improvements to practices in the sector, which will improve price, quality and service to customers. At the hearing, the CMA invited us to provide evidence that non-price remedies would be effective, such that price regulation would be unnecessary. This note does not prejudge the extent to which the evidence supports findings that there are adverse effects on competition arising from features of funerals markets. As we have submitted elsewhere, those concerns are overstated. However, for the purposes of this note we have taken as a starting point concerns expressed in the Issues Statement and set out in more detail how these remedies would work to address those.

#### **B. POTENTIAL NON-PRICE REMEDIES**

- 1.2. We proposed a number of potential non-price remedies to the CMA in the course of the market investigation in our response to the CMA's Issues Statement. We also supplemented this with suggestions at the CMA hearing and our follow-up letter dated 7 August 2019. We have given further thought as to how these remedies might be built on and developed to ensure they meet the CMA's concerns; are effective, clear and proportionate; and are capable of being enforced. This submission does not expand on all of the remedies we have previously proposed. For example we do not further address quality and market opening remedies, or various of the transparency and sales process remedies. We still strongly advocate for the importance and effectiveness of those remedies that are not reiterated here. Crucially, increased transparency and pressure to create more price competition must go hand in hand with measures that adequately secure the quality of the services that are provided. It is not the purpose of this paper to develop how that might be done, but it is essential that this happens. For ease of reference, we below repeat a table of suggested remedies taken from our response to the Issues Statement.

<b>Category of remedies</b>	<b>Co-op suggested potential options</b>
Information / transparency remedies	<ul style="list-style-type: none"><li>a) Funeral directors to publish their prices online, with full details of the service included in the price;</li><li>b) Funeral directors to provide customers with all options, including both simple funeral and direct cremation alternatives, at the outset of a funeral arrangement;</li><li>c) Funeral directors to disclose prices for defined third party disbursements (which should only include minister or officiant fees, burial/interment and gravedigger fees (for burials) or cremation fees and fees for cremation documents (such as doctors' fees) for cremations);</li><li>d) Funeral directors to make group ownership of individual homes clear;</li></ul>

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	e) The existing NHS "end of life pathway" guidance could incorporate some information about organising a funeral, drawing on the funerals advice that the CMA has already published.
Remedies to regulate quality of service	<ul style="list-style-type: none"> <li>a) An enforced regulatory regime for the aspects of quality of funeral directors and funeral homes that are not visible to customers;</li> <li>b) Enforcement of minimum quality standards, including inspections of unobserved aspects of quality and upfront transparency in relation to quality.</li> <li>c) Any regulatory regime should also apply to third party suppliers of coffins (and any other appropriate elements of a funeral that may be sourced from third parties by the customer)</li> </ul>
Sales process remedies	<ul style="list-style-type: none"> <li>a) Regulation of the point of sale – what is offered, how it is presented, how customers are secured.</li> <li>b) Funeral directors to always offer customers clearly defined low-cost options, including both simple funeral and direct cremation alternatives at the outset of a funeral arrangement;</li> <li>c) Funeral directors to present all options, including low cost options, to customers upfront in a clear, transparent and equivalent way.</li> <li>d) Funeral directors should always include defined core services that would be reasonably expected by a customer in advertised headline prices for a funeral.</li> <li>e) When passing on third party disbursements for core services essential to a funeral i.e. crematoria fees, doctor's fees, clergy fees, funeral directors to do so at cost, without any mark-up;</li> <li>f) Funeral directors to be prohibited from directly or indirectly making payments to third party intermediaries in order to secure referrals or</li> <li>g) recommendations unless the existence of those payments is clearly disclosed to the customer at the point of referral or recommendation (and at the first interaction with the relevant funeral director);</li> <li>h) Funeral directors might also be prohibited from discriminating over when payments are required for different kinds of funeral types, in order to apply subtle pressure to choose the option with deferred payment.</li> </ul>
Market opening remedies	a) A cap on any exit or switching fees a funeral director can charge to a customer wishing to transfer the deceased to a different funeral director.

1.3. We set out below our more detailed explanation of the relevant non-price remedies and our evidence in support of them.

1.4. We note that the Royal London report<sup>1</sup> acknowledges that there has been a slowdown in funeral cost inflation, which has continued into 2019 (the average funeral cost increased only by £28 (0.7%) over the last 12 months and that funeral directors' average fees have fallen over the last couple of years (a 4.5% drop between 2017 and 2018, and a further 1.1% drop between 2018 and 2019)). In real terms,<sup>2</sup> this equates to a drop in funeral directors' average fees of 9.6%,

<sup>1</sup> Royal London (2019), '[Change on the horizon? National Funeral Cost Index Report 2019](#)'.

<sup>2</sup> From a base of 100 in June 2017, the CPI in June 2019 was 104.45. See ONS (2019), '[Consumer price inflation, UK: August 2019](#)', 18 September.

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2017-19. For example, Co-op reduced the price of the Simple funeral by 5% in 2017-18 in nominal terms (from £1,995 to £1,895), as a result of market pressure and the changes in practice that Co-op has adopted to address those pressures, respond to funeral poverty and generally improve customer experience. In itself, that significant change in Co-op's fees over the period indicates that its changes in practice, as well as direct price reductions, have created real benefits for customers.

## 2. Specific non-price remedies

- 2.1. Below we propose several non-price remedies, showing how they would be effective, proportionate and enforceable. These remedies relate to the point of sale; upselling; online transparency; and complaints handling.

### Point of sale

*Mandate that funeral directors have text on their websites, in their marketing materials, and materials provided to customers for removals, that:*

- *suggest customers can visit a price comparison website; and*
  - *that the consumer can use other funeral directors.*
- 2.2. This disclosure would facilitate shopping around, and inform consumers that the removals do not contractually bind the consumer to that particular funeral director. For example, disclosure encouraging shopping around is required by the FCA on customer communications for insurance products at renewal.<sup>3</sup> This remedy would be **effective**, as it would make shopping around for a funeral director feel more normal for consumers, and would reduce any feelings of restricted choice. Regarding removals, this information would be provided to consumers before the full arrangement process. It would be **proportionate** as the cost of adding this disclosure to funeral director materials would be low, even for smaller funeral directors. It could be **enforced** through spot-checks of funeral director materials and websites.
- 2.3. Importantly, price comparison websites (PCWs) must be designed to allow consumers to compare both price and quality, and quality of care must be given prominence. Without emphasising the quality of care on PCWs, quality of care risks being 'hollowed out'. For example, there have been well-publicised concerns about the 'hollowing out' of insurance products.<sup>4</sup> The risk of a race to the bottom on quality is particularly acute for at-need funerals, as many important aspects of quality are unobservable to customers.

*Require funeral directors to offer a standardised Simple funeral at the start of the point of sale conversation and on their websites; and to present the Simple funeral with no-less-than-equal prominence to any other options.*

- 2.4. As the CMA will be aware, on 4 September 2019, Royal London published its national Funeral Cost Index Report 2019 entitled 'Change on the horizon for the funeral industry?' The report states that the number of people who struggle to pay for a funeral remains at 12%, with the individual shortfall they face having increased by 14%, from £1,744 in 2018 to an all-time high

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<sup>3</sup> FCA (2017), '[Transparency in insurance renewals](#)', 8 March.

<sup>4</sup> See for example, Fairer Finance (2018), '[Misbuying insurance](#)', February.

of £1,990 in 2019. Importantly, the report does not attribute this to funeral directors' costs (which have on average fallen over the last couple of years), but rather to lack of availability of consistently clear information about, and consequent uptake of, low cost funeral options by those on lower incomes. In particular, the report notes with concern that, for 36% of customers surveyed by the Royal London, low cost options were not discussed because neither the funeral director nor the customer raised the topic. Of the 43% of customers who had a discussion about low cost options with a funeral director, 21% (i.e. around half) was because the customer had asked the funeral director. The report also observes that the complexity in the choices and terminology used to describe different funeral packages is confusing. We agree with this sentiment, and have raised the same issues with the CMA in the course of its market study and market investigation.

- 2.5. As such, the report calls for funeral directors to commit to discussing low cost options with all customers and using consistent terminology, so that customers can understand the difference between what is being offered and are easily able to compare package prices. The impact of offering a standardised Simple funeral to all customers could be significant. For example if the number of customers offered the Simple funeral increased from 64% of customers to 100% of customers, this could increase the take-up of Simple funerals across the market by 56%.<sup>5</sup>
- 2.6. The Scottish Government's draft guidance on funeral costs includes a proposed standard definition of a simple funeral, as well as a proposed glossary of terms for use across funeral directors to remove ambiguity and to create some consistency in the way that funeral processes and costs are communicated. We are in favour of these proposals and have provided specific comments on the proposals in our response to the Scottish Government's consultation on the draft guidance (which is publicly available on the Scottish Government's website).
- 2.7. Last, we note that standardising the Simple funeral will result in a level-playing field between funeral directors in terms of features, and – in combination with regulation of quality – ensure that there is no 'race to the bottom' of quality (as some aspects of the funeral directors services are unobservable to customers).
- 2.8. This remedy would be **effective** in ensuring that all customers can choose a lower cost funeral, and **proportionate** because it would not place a large administrative burden on funeral directors (many of whom already offer the Simple funeral). It could be **enforced** through mystery shopping and/or spot-checks of funeral director materials and websites. A recommendation could also be made that third party intermediaries, such as registrars, care homes and hospitals, remind customers that all funeral directors must offer a Simple funeral, so they are already aware before they first speak with a funeral director.

#### Responsible Customer Engagement

*Require funeral directors to have appropriate staff training in place for dealing with vulnerable customers.*

- 2.9. This would involve requiring funeral director staff to be trained to deal with vulnerable customers. While it is likely that many funeral director staff already treating vulnerable customers sensitively, this remedy would be **effective** because it would ensure that that all staff

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<sup>5</sup>  $100/64 - 1 = 0.56$ . This assumes take-up of Simple funerals among those not currently offered one would be the same as the take-up rate for the 64% who are currently offered one.

(and therefore all customers) receive the best treatment from their funeral director. The training would cover topics including avoiding pressure sales (e.g. upselling additional items that the consumer does not want). In general, there are two types of staff training, which would also help raise quality of care standards across the industry:

- 2.10. **Accredited training and qualifications.** Accredited training stands as a mark of quality and can bring about benefits to colleagues, the wider business and most importantly the customer. Accrediting all qualifications and training by an official accreditation body would drive improvements in both sales practices and standards/quality of service. First class training is a vital part of any business' journey to consistency of good quality, low service failures ways of working. Within Co-op, we consider the quality of our funeral directors and our staff to be an important driver in ensuring that we are providing a consistently high standard of care and quality of service to our customers and their loved ones. We offer two industry leading and innovative vocational apprenticeship routes to our frontline colleagues aiming to give them the skills, knowledge and behaviours required to do their new role. All colleagues are assessed over the period of 12-18 months to demonstrate their competency. The qualifications are:

2.10.1. FNC Operations and Services Level 2 Apprenticeship – offered to new Funeral Service Operatives, Funeral Arrangers and Funeral Directors.

2.10.2. FNC Operations and Services Level 3 Apprenticeship – offered to Funeral Directors when they have completed the Level 2 Apprenticeship.

- 2.11. **Continuous professional development (CPD).** Professionals in the funeral sector are generally seen by grieving customers as trusted advisors and experts within the field, therefore it is essential that all colleagues continuously develop themselves so that they can deliver the exceptional service for customers which will be enhanced through adhering to their own company and industry wide sales practice policies and working practices. Generally, processes followed within the funerals sector do not change dramatically on an annual basis so when change does occur, Co-op provides the necessary training regardless of CPD requirements. 1–15 hours across the funeral sector as a whole seems most appropriate in comparison to other regulated industries (such as the legal industry) which could be used as a benchmark. We suggest that for funeral directors and funeral arrangers the CPD requirements should be 15 hours, and 10 hours for funeral operatives.

- 2.12. This remedy would be **proportionate** because it is unlikely to place a large administrative burden on funeral directors, and small funeral directors will naturally have fewer staff to train. However, we appreciate that accreditation may come with time implications for small funeral directors, and therefore it might be proportionate to allow smaller providers more time to be compliant with the requirement. It could be enforced through spot checks, or through scrutiny of (concise) regulatory submissions.

*Ensure that staff remuneration does not incentivise upselling.*

- 2.13. This would include ensuring no financial incentives for staff to sell one package over another, and no incentives to upsell additional services to customers; essentially to ensure that as far as possible, the incentives of the funeral director and other members of staff are aligned with the needs of the consumer. For example, the FCA requires firms to avoid putting in place monetary or non-monetary incentives to undertake 'actions or behaviours that are contrary to achieving

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good consumer outcomes'.<sup>6</sup> This remedy would be **effective** as it ensure the alignment of the interests of the sales staff with the interest of the customer. It would be **proportionate** because even the most costly implementation of this rule would ultimately lead to a simplification of incentive structure enjoyed by sales staff. We do, however, recognise that this remedy would be of limited effectiveness where the funeral director has very few staff (i.e. where the firm owner and sales staff are the same person). Therefore this remedy could be imposed on any funeral director which employs staff, and could be **enforced** through spot checks of employment contracts, and/or site visits.

*Requirement that funeral directors pass on third party disbursements at cost without any mark-up*

- 2.14. This would prohibit adding mark-ups on third party disbursements, where they are simply 'intermediary services between the customer and third parties' that are essential components required for a funeral, including the crematorium costs, the burial site costs, the doctor's fees, and the minister or celebrant's fees.<sup>7</sup> Prohibiting mark ups on third party disbursements would be **effective** because it would deal with a concern that this may be a hidden means to increase costs to consumers and would work hand in hand with regulation of certain third party disbursements, especially cremations, which make up the vast majority of third party disbursements (for cremation funerals). It would also be **proportionate**, as the administrative cost of implementing simpler and more transparent pricing of third-party disbursements is unlikely to be significant. It is also unlikely to be a significant cost for smaller funeral directors. It could be enforced through scrutiny of regulatory submissions proving compliance. Such enforcement would need to ask direct questions relating to volume rebates etc. which could be designed to circumvent the regulation. We also note that a similar remedies have been enacted in other jurisdictions.

Encouraging shopping around

*Requirement that every provider is listed on at least one price comparison website*

- 2.15. Requiring every funeral director to be listed on at least one PCW that meets an appropriate standard for displaying quality and service as well as price information would be **effective** because it would ensure there is online price pressure and transparency on all funeral directors. Importantly, as noted above, PCWs must be designed to allow consumers to compare both price and quality. Quality of care must be given prominence in order to protect against the risk of quality being hollowed-out (there is evidence of this in the insurance market<sup>8</sup> and given the 'hidden' aspects of quality in the funerals sector, this could be a significant risk). These remedies would be **proportionate**, because the requirement to feature on at least one PCW is also unlikely to be a significant administrative burden for smaller funeral directors, as they will only have one funeral home to list. This could be enforced through web scraping of PCWs, and scrutiny of regulatory submissions proving compliance.

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<sup>6</sup> FCA (2018), '[Staff incentives, remuneration and performance management in consumer credit](#)', FG18/2, March.

<sup>7</sup> As defined in CMA (2019), '[Funerals market study Final report and decision on a market investigation reference](#)', 28 March, para 4.2.

<sup>8</sup> See for example, Fairer Finance (2018), '[Misbuying insurance](#)', February.

- 2.16. As set out in Oxera's international comparators submission<sup>9</sup>, there is evidence of transparency regulation in a number of countries, including France, Spain, the USA and parts of Canada. For example, the Federal Trade Commission is reviewing (in 2019) whether to require that price lists are published online in the USA.

*Require funeral directors to publish their prices online*

- 2.17. As discussed in Oxera's 2018 report 'Disclosure in at-need funerals', lengthy and detailed price lists, as required in the USA and parts of Canada, may be counterproductive to encouraging effective consumer decision-making if they lead to information overload.<sup>10</sup> Therefore, the online prices may not need to be detailed prices lists, as long as they give enough information of the prices incurred for different packages. This would be **effective** in that it would enable consumers to find the prices of any funeral director before entering the home, and would be **proportionate** in that funeral directors are likely to already have their own websites. Indeed, the commercial pressure to have an online presence is likely to mitigate any incentive to avoid having a website altogether, meaning that funeral directors would only be required to add price information (in a prominent placing) to their websites. It could be enforced through web scraping.

Complaints handling

*Establish an independent disputes resolution mechanism, which would arbitrate in cases where the customer disagreed with the funeral director's decision on their complaint.*

- 2.18. This could be with a statutory regulator, or the financial ombudsman service, or with an empowered trade body. In order to be **effective**, such a mechanism should be free for consumers to use (regardless of whether they win the case); mandatory for funeral directors to join; and have the power to produce binding decisions. It would also be important for funeral directors to display information about the disputes resolution mechanism to consumers in their materials, to ensure that every customer is well-informed. This remedy would be **proportionate** (i.e. limited regulatory burden for funeral directors unless they face a large number of disputes), and would incentivise funeral directors to deal with complaints adequately. It could be **enforced** through checking that all funeral directors are subscribed to the dispute resolution mechanism, and through spot-checks of funeral director materials. One example of a disputes resolution mechanism is the NAFD Resolve (launched in May 2019), which is a free and independent process for consumers and covers services which cost over £1,000 which were purchased in the last 12 months.<sup>11</sup>

### **3. Enforcement**

- 3.1. Effective regulation requires enforcement, as highlighted by the Oxera report on comparator countries.<sup>12</sup> Indeed, there is evidence of enforcement of regulation on funeral directors in other

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<sup>9</sup> Oxera (2019), 'Funerals regulation in comparator countries', 16 April.

<sup>10</sup> Oxera (2018), 'Disclosure in at-need funerals', 19 October.

<sup>11</sup> <https://nafd.org.uk/resolve/>

<sup>12</sup> Oxera (2019), 'Funerals regulation in comparator countries', 16 April.

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countries, for example in Canada. However, there is also evidence that where regulation is not enforced, it is not effective (for example in France).

- 3.2. The most effective method of enforcement would be to create a statutory regulator for at-need funerals, as has occurred in Scotland. However, in the absence of such a regulator, some of the enforcement activity could be undertaken by empowered trade bodies or the financial ombudsman service. In our view, self-regulation is less likely to be effective.
- 3.3. Enforcement of a large number of smaller firms is achievable through regulatory spot-checks, mystery shopping,<sup>13</sup> web-scraping website materials, scrutiny of regulatory submissions proving compliance and other measures. For example, the FCA regulates financial advisors – a fragmented market with thousands of firms.<sup>14</sup>

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<sup>13</sup> Mystery shopping involves representatives going through the steps of the purchase as a consumer would, without revealing their identity. Spot checks involve the regulator (or other body) checking compliance, e.g. through site visits.

<sup>14</sup> FCA (2019), '[The retail intermediary market 2018](#)', 6 June.

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