

FUNERAL MARKET INVESTIGATION

REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

CO-OP RESPONSE

Executive Summary

1. While the CMA has withdrawn its deadline for submission of comments on its latest batch of working papers, it has asked Co-op if it is in a position to provide comments. We have previously shared that we are willing to do this, however, the comments are being finalised by the Legal team without significant involvement by our Funeralcare business colleagues, who are currently focussed on adapting to the significantly changing environment resulting from the coronavirus pandemic and ensuring we continue to support families at this very difficult time. We, therefore, may have additional comments we want to add at a later date.
2. This document sets out Co-op's submissions (on the basis set out above) in response to the CMA's Working Paper on remedy options for regulating the price of crematoria services (**Paper**). This response was largely drafted prior to the COVID-19 pandemic and does not therefore fully take account of its implications for our customers, our business and, most importantly for this response, the sector as a whole.
3. While some of these impacts may be temporary, we believe that others will speed up or lead to permanent changes we were already seeing in the market as funeral directors exit the market and consumers become more familiar with unattended funerals.
4. For example, we believe the increased take-up of unattended funerals will become a permanent feature of the market, putting sustained pressure on the profitability of funeral directors, while having much less impact on crematoria services.
5. We do not believe it is right to introduce any form of price control remedy to a sector that is being severely affected by the COVID-19 pandemic in ways that are difficult to assess at this time. However, the rationale for introducing price regulation is stronger for crematoria than it is for funeral directors – as stated in Co-op's responses to other working papers – we believe it would be wholly disproportionate to impose price regulation for funeral directors.
6. The CMA considers possible price control remedies for funeral director services in a separate working paper.¹ As we make clear in our response to that paper, we think such a remedy is wholly unwarranted and would result harmful unintended consequences. We believe those consequences will be even more severe, if, as is implicit in the CMA's working papers, it imposes price control for funerals but does not do so for crematoria. We are concerned that the CMA appears more tentative about introducing price regulation for crematoria than it is about price regulation for funeral directors.² This is unexpected and inconsistent given more significant supply-side concerns for crematoria, while the evidence on the funeral services market points toward a broadly well-functioning market, particularly on the supply side.

¹ CMA (2020), 'Remedy options for regulating the price of funeral director services at the point of need'

² See, for example, CMA (2020), 'Remedy options for regulating the price of crematoria services', paras. 1, 35. When discussing price regulation of crematoria the CMA uses language such as 'should we consider that it be required', which appears milder than the language use in the corresponding funeral director price regulation remedies working paper.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

7. The proposed remedy option for price regulation in the crematoria services market is very similar to the price control remedy proposed in the funeral services market. We are very surprised at the similarity of the proposed approach given the important differences in terms of market structure and product offering. The CMA itself notes that ‘the crematoria services sector has some different characteristics to the funeral director services sector’.³
8. For example, the CMA highlights the much smaller number of operators in the crematoria services market compared with the funeral services market. There are a total of 184 operators operating 303 crematoria in the UK, while the number of funeral directors runs into the thousands.
9. In terms of product offering, the CMA also states that: ‘Given that crematoria services are a relatively homogenous ‘product’, our current thinking is that we would identify a commonly purchased combination of cremation services and apply a maximum price to this ‘benchmark package’.⁴ This rationale clearly does *not* apply to the services provided by funeral directors, where there is no ‘one-size-fits-all’.
10. Indeed, the CMA acknowledges that ‘some aspects of the crematoria services sector make a price control remedy more straightforward to design’.⁵ It is therefore completely illogical for the CMA to propose an almost identical remedy in two different markets where the very reason for proposing it in one market (crematoria) does not apply in the other market (funeral directors).
11. The following table draws out a number of important differences between crematoria services and funeral director services.

	Crematoria services	Funeral director services
Market concentration	Concentrated market (84% of crematoria in the UK do not have a competitor within a 20-minute cortege drive time and 50% do not have an alternative within a 30-minute cortege drive time.)	Largest players have a relatively small market share (collective market share under 30%, and falling). Only 27% of Co-op homes do not have a Dignity or Funeral Partners home within its 80% catchment area. ⁶ This percentage would be even lower if all funeral directors would be taken into account.
Price competition	Crematoria operators do not typically compete on price. In real terms, average local authority and private cremation fees have	Average revenue per funeral for simple and standard funerals decreased significantly in 2016, 2017 and 2018. ⁷

³ CMA (2020), ‘Remedy options for regulating the price of crematoria services’, para 34

⁴ CMA (2020), ‘Remedy options for regulating the price of crematoria services’, para 49

⁵ CMA (2020), ‘Remedy options for regulating the price of crematoria services’, para 34

⁶ Co-op response to the CMA working paper ‘Company-level price and market share analysis’. Table 1

⁷ Co-op response to the CMA working paper ‘Funeral directors pricing levels and trends’, para 3.7

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

	increased by 37% and 48% respectively between 2008 and 2018.	
Product offering	Homogeneous product with limited consumer choice.	High product differentiation, with strong consumer preferences for personalisation.
Innovation	The CMA does not highlight evidence of innovation in the market.	Strong innovation. Recent trends include: growth of low-cost funerals; increasing uptake of cremation without ceremony; growth of non-traditional options, such as 'green funerals'.
Industry structure	Small number of players (184 operators operating 303 crematoria).	Thousands of players with diverse business models.
Barriers to entry	Market entry is slow and costly due to high initial sunk costs and regulatory barriers. ⁸	Low barriers to entry (560 new branches were opened between 2013 and 2018). ⁹

12. If the CMA were to price regulate funerals but not crematoria, this could lead to significant negative unintended consequences that go beyond the harmful consequences we would expect from such a remedy in any event. For vertically integrated players such as Dignity, a price regulation affecting its funeral business but not its crematoria business would give it an incentive to shift a greater proportion of the total price towards crematoria fees and undermine the intended effect of the price cap.
13. There could also be similarly greater unintended consequences if the CMA were to impose a local authority tendering remedy (which we also regard as entirely unwarranted) without also introducing a price cap for crematoria fees. This could lead to a situation where funeral directors end up passing on high crematoria fees as part of the total cost of residents' funerals, partially undermining the aim of the CMA's remedy.

The evidence base strongly suggests that to the extent it is justified at all price regulation is more appropriate for crematoria than it is funeral directors

14. The CMA's findings suggest there are a number of issues that significantly affect the supply of crematoria services but which do not affect the supply of funeral director services.

Lack of choice

15. The CMA's consumer survey results and discussions with crematoria operators and funeral directors all indicate that one of the most important factors in a consumer's choice of crematorium is the proximity of the crematorium.¹⁰ The consumer survey found that more

⁸ CMA(2020), 'Crematoria: Background and market structure working paper, para 24.

⁹ Co-op response to the CMA's 'Company-level price and market share analysis'.

¹⁰ CMA (2020), 'Crematoria: evidence on competition between crematoria', paras 24-25

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

than eight in 10 customers chose the closest crematorium to where the deceased person lived.¹¹ Generally consumers do not travel more than 20-30 minutes to get to a crematorium from the deceased's home. Within this local area there is limited choice of crematoria.¹²

16. The CMA's findings on the supply side of the market underline this lack of choice and competition:¹³
- (a) 'the provision of crematoria services tends to be concentrated'.
 - (b) '84% of crematoria in the UK do not have a competitor within a 20-minute cortege drive time and 50% do not have an alternative within a 30-minute cortege drive time'.
 - (c) 'market entry tends to be costly (there are high initial sunk costs required to enter).'

Lack of price competition

17. Consumer survey results and discussions with crematoria operators and independent funeral directors suggests that price is not an important factor to consumers. Where respondents did not use the closest crematorium, only 1% cited price as the reason.¹⁴
18. This is supported by the CMA's findings of lack of price competition.
- (a) The CMA has not found evidence that crematoria use benchmarking activities to undercut rivals on price.
 - (b) 'local authority crematoria do not respond to entry in terms of the prices they set'.
 - (c) 'On average, private crematoria that have experienced entry tend to increase rather than decrease their fees.'
 - (d) 'Price/quality differentials seem to have a very limited impact on the choice of crematoria'.
 - (e) 'the characteristics of the [crematoria sector] that have allowed crematoria operators to set prices at above the competitive level and to increase prices over the period of our analysis could remain in future.'
 - (f) 'In real terms, average local authority and private cremation fees have increased by 37% and 48% respectively between 2008 and 2018.'
 - (g) Furthermore, average cremation fees reported by the CMA in its working paper 'Funeral directors pricing level and trends'¹⁵ continued to rise above inflation in 2019.¹⁶ This is also confirmed by the latest issue of the Royal London survey report.¹⁷

¹¹ CMA (2020), 'Crematoria: evidence on competition between crematoria', para 46

¹² CMA (2020), 'Crematoria: evidence on competition between crematoria', para 13

¹³ CMA (2020), 'Remedy options for regulating the price of crematoria services', para 42-46.

¹⁴ CMA (2020), 'Crematoria: evidence on competition between crematoria', table 1

¹⁵ CMA (2020), 'Funeral directors pricing level and trends', table 5

¹⁶ Co-op response to the CMA's working paper 'Funeral directors pricing level and trends', Figure 2 and Table 1

¹⁷ Royal London, National Funeral Cost Index Report 2019.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

Profitability

19. The CMA analysis of profitability in the crematoria services sector states that two of the largest operators 'as well as the majority of the local authority crematoria analysed are earning returns that are significantly in excess of our estimate of the weighted average cost of capital'.¹⁸ The CMA's analysis of ROCE earned by crematoria shows that 'local authority crematoria are making higher returns on average than the large crematoria and that their profitability has increased by around 5 percentage points, on average [over 2014 to 2018]'.¹⁹
20. The CMA's working paper on the profitability of crematoria has a better coverage of the market than the paper on profitability of funeral director services. The CMA collected data from 22 small crematoria, which represent 11% of the small crematoria in the market (compared with 32 out of c. 5,000 branches owned by small funeral directors). More importantly, even though the CMA had a superior coverage of the market in its analysis of crematoria compared with the analysis of funeral directors, in the case of crematoria, the CMA 'supplemented [...] [its] analysis by also reviewing and analysing the data prepared by the [...] Chartered Institute of Public Finance & Accountancy ('CIPFA') on the financial performance of local authority crematoria'.²⁰ This indicates that the CMA was looking for additional evidence to cross-check the results of its assessment based on the sample of 22 small crematoria. We understand that no such cross-check was performed for funeral directors although the coverage of the analysis is inferior.

Price regulation is more likely to be a proportionate remedy in the case of crematoria than funeral directors

21. The CMA guidance notes that measures designed to directly control outcomes, such as price regulation, are often used where effective competition may not be feasible. The competition problems described above point towards issues on the supply side of crematoria services. As noted by the CMA, regulating the level of cremation fees directly constrains firms' ability to exercise market power.²¹
22. Regulatory best practice is to introduce intrusive remedies only when less intrusive remedies are ineffective. Other such remedies could include quality regulation or information and transparency regulation. However, evidence cited by the CMA indicates that family connections and proximity are generally the most important factors in choosing a crematoria and that quality and price only plays a very limited role.²² The CMA findings suggest that very few customers compare crematoria and those who do, rarely compare on price or aspects of quality other than the attractiveness of the buildings and grounds. Therefore, unlike funeral services, the introduction of quality regulation or price transparency remedies on its own is not likely to be sufficient to address competition concerns and limit consumer harm in this market.
23. One of the most important factors in choosing a crematoria is location/proximity and that '84% of crematoria in the UK do not have a competitor within a 20-minute cortege drive time and 50% do not have an alternative within a 30-minute cortege drive time',²³ which results in a

¹⁸ CMA (2020), 'Crematoria: Profitability Analysis', para 177

¹⁹ CMA (2020), 'Crematoria: Profitability Analysis', para 181

²⁰ CMA (2020), Funeral Market Investigation – Crematoria: Profitability Analysis', paras 20–24.

²¹ CMA (2020), 'Crematoria: evidence on competition between crematoria', para 12.

²² CMA (2020), 'Crematoria: evidence on competition between crematoria', para 31

²³ CMA (2020), 'Remedy options for regulating the price of crematoria services', para 42-46.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

lack of choice in crematoria and, according to the CMA, a lack of competition on prices. Indeed, as the CMA have noted, given that the intrinsic nature of the competition problems in crematoria services are pointing towards the supply side of the market, a price control remedy is understandably being considered as a solution to limit consumer harm.

24. The crematoria services market exhibits a number of characteristics that make it a more suitable candidate for price regulation than funeral director services.
25. In contrast with the product offered on the funeral services market, crematoria services can be characterised as a relatively homogenous good.²⁴ As described in the 2019 Oxera price regulation submission to the CMA, 'homogeneity of goods and services provided by firms in the market makes it easier for regulators to identify appropriate price levels for price controls'.²⁵
26. The CMA suggests that there is little or no competition on price or quality and notes 'Price/quality differentials seem to have a very limited impact on the choice of crematoria'.²⁶ The CMA also states that 'the provision of crematoria services tends to be concentrated'.²⁷ Typically, in markets where there is limited or no competition due to the market structure and barriers to entry, as is suggested to be the case in the crematoria services market, there is a lower risk that price regulation will introduce distortions to competition.
27. Indeed, price regulation is most effective when carefully targeted at 'bottlenecks', while elsewhere in the value chain the regulator seeks to promote competition.²⁸ The CMA should consider how the crematoria market provides a 'wholesale input' to the funerals market; cremations are an input to the overall service purchased by consumers. Indeed, it is an input to over three quarters of UK funerals (the other main option being burial).
28. Crematoria face limited competition in the provision of a key wholesale input for funerals (both from other crematoria and from 'outside options' such as burial). Further, there is vertical integration of wholesale and retail markets (i.e. between crematoria operators and funeral directors, and between crematoria operators and local authorities).
29. Therefore the CMA should only implement funeral director price regulation once it has demonstrated that a package of crematoria price regulation, combined with a package of non-price remedies in the funeral director services sector, would be insufficient.
30. In addition, while the number of operators on the funeral directors market runs into the thousands, there are only 184 operators operating 303 crematoria in the UK.²⁹ When there are only a few market players, the overall administrative costs of price regulation tends to be outweighed by the benefits.³⁰

²⁴ CMA (2020), 'Remedy options for regulating the price of crematoria services', paras 3, 49

²⁵ Oxera (2019), 'Price regulation of at-need funerals', 4 November, para 4.6.

²⁶ CMA (2020), 'Remedy options for regulating the price of crematoria services', para 43

²⁷ CMA (2020), 'Remedy options for regulating the price of crematoria services', para 42-46.

²⁸ Oxera (2019), 'Price regulation of at-need funerals', 4 November, para 4.4

²⁹ CMA (2020), 'Remedy options for regulating the price of crematoria services', paras 67

³⁰ Oxera (2019), 'Price regulation of at-need funerals', 4 November, para 4.5

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES

31. The CMA's analysis suggest that consumers primarily choose based on proximity/location and that the majority of consumers are not willing to travel for more than 30-minutes to a crematorium. The CMA finds that the lack of consumer choice in crematoria results in lack of price competition. The nature of the problem, limited choice of crematoria, is a supply side issue that cannot be solved by a demand side remedy. Given the homogeneous nature of the services provided in this market and the relatively concentrated market with only a small number of operators, we consider that a price control for crematoria services is a proportionate and effective remedy.

Price regulation of funeral directors but not crematoria would lead to significant additional negative unintended consequences

32. For vertically integrated players such as Dignity, a price regulation affecting its funeral business but not its crematoria business would give it an incentive to shift a greater proportion of the total price towards crematoria fees. This would allow it to essentially charge the same overall price, including crematoria fees as it does now, thereby undermining the intended effect of the price cap. Non-vertically integrated players such as Co-op would not be able to act in this way and so would be at a commercial disadvantage compared to integrated players.
33. Dignity would also have an even greater incentive to encourage consumers to purchase a cremation from one of its own crematoria, as opposed to using a different crematorium or choosing a burial. This would distort the crematoria market, and lead to worse consumer outcomes.
34. There will in all likelihood also be unintended consequences if the CMA were to impose a local authority tendering remedy without also introducing a price cap for crematoria fees. If local authorities were tasked with tendering resident funerals that were inclusive of disbursements, this could lead to a situation where funeral directors were essentially forced to pay unregulated local authority crematoria fees. In the competitive funeral market, this would necessarily need to be passed on to consumers, thereby undermining the intended effect of the remedy.