

**Funeral Partners' response to the CMA's Working Papers published 30<sup>th</sup> January 2020****Executive summary**

Funeral Partners welcomes the opportunity to comment on the CMA's Working Papers issued on 30<sup>th</sup> January 2020. Funeral Partners recognises that, in the absence of the CMA declaring an Adverse Effect on Competition ("AEC"), all Working Papers do not represent decision-making by the CMA at this stage in the investigation, and that the Working Papers instead represent emerging thinking.

We recognise additional Working Papers have been published on 20<sup>th</sup> and 21<sup>st</sup> February 2020 and our response to these Working Papers will follow. Accordingly, Funeral Partners would note to the CMA that we reserve the right to amend and update our views on this submission (i.e. our views on the Working Papers published on 30<sup>th</sup> January 2020) in any subsequent response (which may extend to, but is not limited to, our response to the Working Papers published on 20<sup>th</sup> and 21<sup>st</sup> February 2020), given the clear interconnections between the various Working Papers which are currently available for review, along with the staggered timescales associated with responding.

Irrespective of whether the CMA may find an AEC, and notwithstanding the fact that Funeral Partners believes that the CMA will find no AEC in the market (it is already well-functioning and competitive), we may welcome certain potential remedies emerging from our reading of certain Working Papers.

In particular, we may support the principle of a regulatory regime being introduced which would be applicable and enforceable industry-wide, where any such regulator concerns itself primarily with governing 'back of house' standards. We believe such a regime may level the playing field across the entire industry in relation to 'unobserved' quality, as opposed to certain minimum standards being currently applicable and limited to, for example, members of a trade association. In addition, the regime may support providing to all consumers what certain consumers already expect when it comes to 'back of house'.

Crucially, in addition to focussing primarily on governing unobserved quality, we believe that a regulatory regime could also play a role in governing transparency matters in the industry, as well as unobserved quality. In particular, we believe a regulator could oversee, for example, a requirement to deliver further transparency of pricing, such as overseeing the requirement for the provision of certain pricing information to be made available by all providers across certain channels at all times. These channels could extend to, but may not be limited to, a provider's website, over the telephone or to a physical funeral home.

Notwithstanding our support for the principle of a potential regulatory framework, we would note that we would require additional detail before we can comment on the specific value that any such regulatory regime would add. This detail may allow us to calculate one-off and ongoing costs to comply with any new regime, and the detail may better enable us to comment on the funding options available to cover the costs of the regulator itself.

In contrast to our potential support above relating to a regulatory framework, Funeral Partners is not in favour of certain potential remedies as articulated in the Working Papers of 30<sup>th</sup> January 2020. We elaborate further on the specifics below. In addition, when it comes to any potential remedy, we would strongly assert that it would be wholly inappropriate for the CMA to apply any remedy, or set of remedies, to certain providers only.

In relation to any potential remedy, we are of the firm view that any remedy must be applied industry-wide. To isolate a remedy, or a set of remedies, to certain providers and/or sub-sections of the market will be hugely distortive of competition given that the funerals market is characterised by local markets, and to apply remedies only to certain providers would mean large areas of the country remain untouched and unaffected. As a result, certain consumers would not be impacted.

**Non-confidential**

In particular, we would strongly oppose any remedy were it to be applicable by provider size. Fundamentally, we believe that no case has been made by the CMA which provides evidence that certain providers have any market power as a result of their size, nor any evidence which suggests that there is any consumer detriment arising from a provider as a result of the provider's size. Accordingly, there appears to be no justification for any segmentation when it comes to the applicability of a remedy, or a set of remedies.

We continue to challenge the relevance of any segmentation made by the CMA in this regard, principally because the market (with the potential exception of the 'direct cremation' market) operates on a highly fragmented and very local basis and where the 'largest player' is in fact the collective of independents throughout the country, making up around two thirds of all funeral homes nationwide.

Moreover, in our view it must be the case that any remedies which apply 'back of house' standards (and, by our extension, to care of the deceased) must be applicable to all providers, including new entrants. To do anything different would potentially risk misleading consumers in thinking that a level playing field existed, when in fact it varied by provider. Furthermore, any variation may imply that certain minimum standards concerning 'back of house' (which include any associated reporting requirements) are at times 'optional', which we believe goes against the principles of consistency for consumers when it comes to operating practices and goes against the requirement for a level playing field, particularly when 'back of house' standards concern care of the deceased.

Finally, Funeral Partners remains of the strong view that the industry is already working for consumers, and that the CMA's own research would suggest that there is in fact no competition issue to address, and therefore no AEC to be found. Nevertheless, were the CMA to find an AEC (and, in our view, such a finding would always be erroneous), we would state that the least imposing remedy sufficient to address the CMA's concerns should be recommended, and that any such remedy, or set of remedies, must be reasonable and practical and minimise the risk of negative unintended consequences.

Clearly, the funerals market has evolved over a long period of time and despite some internal coherence it remains fragile and highly fragmented, not least given the fact that the largest player in the market is in fact the overwhelming number of independents in operation. We believe that the CMA must balance any benefit of intervention with the risk of disrupting existing processes and existing positive customer outcomes which include, but are not limited to, the very high levels of customer satisfaction which are already in place. Accordingly, we would strongly note that we believe there to be a very high risk of the emergence of negative unintended consequences should the CMA decide to intervene in the market in certain ways, and a very high risk that such intervention may in fact distort competition.

Furthermore, the market continues to evolve for the benefit of consumers, in the absence of any state intervention. For example:

- Innovation, including the emergence of new propositions such as 'direct cremation', is continuing at pace and threats for all providers remain real, ever-present and growing.
- From a standards perspective, the industry is in the process of continuing to self-adjust for the benefit of consumers. The two trade associations (who cover c70% of the market) will soon be governed by a joint Code of Practice, as drafted by the independently-chaired Funeral Services Consumer Standards Review. In addition, both trade associations are supporting proposals for oversight of the industry through an 'arm's length' regulatory framework (open also to non-members of trade associations) and established as a Community Interest Company.
- Finally, in what is principally a services sector (as opposed to a commodity market), we maintain that funeral services between providers continue to be differentiated by quality considerations, which can be, and are, perceived by customers. Further, such quality variations can, and do, explain the differing prices charged between providers, which are at all times also constrained by local competition.

Accordingly, we remain unclear on what grounds any AEC may be found in the industry.

**Preamble**

We structure our response by first responding with our views on the two papers which concern potential remedies, namely the 'Quality regulation remedies' Working Paper and the 'Information and transparency remedies' Working Paper.

Following our response to these two Working Papers, we comment by exception on the remaining Working Papers published on 30<sup>th</sup> January 2020.

**'Quality regulation remedies' Working Paper****Remedy selection**

We would be supportive of the establishment of a regulator for the funeral profession, where any regulation was consistent across, and applicable to, all providers. Our support of the establishment of a regulator is subject to reviewing further details and specific ways of working which the regulator may impose, along with our support being subject to a further understanding of the one-off costs required to implement a regulatory framework, and any subsequent ongoing compliance costs.

Our support of a regulator is principally attributed to the fact that it remains the case that certain providers do not need to belong to trade associations. As such, there remains a risk that certain consumers may assume certain standards are in place (particularly 'back of house' standards), when it may be the case that these standards are in fact not present.

Notwithstanding our potential support of a regulatory framework, and in line with the Executive Summary in this paper, we would remind the CMA that the industry is already taking steps to adjust its approach to standards regulation, with increased collaboration between the two existing trade associations together with non-member representation, and also with the production of new Codes of Practice, along with proposals for arm's length regulation.

Nevertheless, we recognise that a potential remedy around industry-wide regulation could emerge from the CMA's current thinking, which may enforce certain standards to be applicable across all providers. In addition, we recognise that a regulatory framework could be developed from an amendment to an existing regulatory framework, such as the Care Quality Commission ("CQC").

Adapting an existing framework may help better control, as well as to minimise, one-off and ongoing costs of establishing and maintaining a regulatory regime. In relation to the CQC, Funeral Partners is of the view that there is a potential link between the need for oversight of providers of care of deceased in the care sector (by the CQC) with the need for the potential oversight of providers of care of the deceased in the funerals sector. This is the case not least because it is a fact that many people die in a CQC-regulated environment (such as a hospital or care home) and, as such, it is in these environments where the very first aspects of care of the deceased will be provided. The process of transferring care of deceased from one provider to another provider may benefit from such oversight being provided by the same regulatory regime.

In relation to the scope of a potential regulatory regime, we support the overall proposal and focus for quality regulation to concentrate on 'back of house' standards, as opposed to 'front of house'. It is the case that 'back of house' quality is largely and typically unobservable to consumers, and it is a fact that a significant proportion of consumers believe that the industry is already regulated in some way (in line with the CMA's own findings). Amongst certain consumers, there remains a corresponding belief that certain safeguards exist (relating to such things as care of the deceased) when, in reality, they may not. As such, there is an inherent risk of consumer detriment should it be the case that certain providers choose not to invest in certain aspects of 'back of house' quality.

**Non-confidential**

We recognise that the CMA has stated that many funeral directors provide an 'acceptable' standard when it comes to 'back of house' quality. However, specifically in relation to the costs (and therefore the prices) of funeral director services, it remains Funeral Partners' contention that, amongst other things, there exists significant quality variations in relation to 'back of house' standards across providers, and that such variations can and do distort funeral charges paid for by consumers. Levelling the playing field through 'back of house' regulation will enable fairer and more meaningful comparisons to be made between providers and for more premium providers, such as Funeral Partners, to differentiate themselves through, for example, going above and beyond any minimum standards.

In contrast, we believe that consumers can and do judge 'front of house' quality for themselves and that such judgements explain the levels of repeat business for certain operators (such as Funeral Partners) whose business model involves the provision of high observed quality. Accordingly, regulation in relation to 'front of house' we believe is of much less value to consumers and would result in an unnecessary additional cost.

In general terms, and in relation to primarily 'back of house' quality, we support the regulatory regime covering the following aspects of scope:

- Collection and transport of the deceased
- Care, storage and preparation of the deceased
- Suitable premises
- Appropriate education and training
- Appropriate governance processes and procedures
- Appropriate complaint handling and customer redress

We support the regulatory regime governing the above scope through the following:

- Statutory minimum standards
- Effective monitoring and enforcement
- An appropriate body being established
- Appropriate collection and dissemination of information to customers

In addition, we support the regulatory regime overseeing at the industry/provider level, as well as overseeing at the individual level e.g. through 'fit and proper' person tests for certain roles employed within the profession.

Whilst we believe any regulatory framework should primarily focus on overseeing 'back of house' standards, we believe a new regulatory framework could also concern itself with overseeing certain limited aspects relating to transparency, which we believe would be of benefit to consumers and may promote further competition in the sector. The regulator could mandate, for example, that funeral directors place certain prices for certain services in certain channels which a provider may operate (such as online, as well as in the funeral home and over the telephone, by request). Such a mandatory requirement, coupled with awareness-raising, may increase the utilisation of certain channels by certain consumers in order to obtain certain pricing information, particularly the online channel. These actions may negate the need for a 'platform' to be created to address certain price transparency concerns which the CMA may have.

By means of a relevant comparison, the CQC has a set of fundamental standards which govern their overall framework for the provision of care by care providers. Examples of fundamental standards include the 'Duty of candour' and the 'Display of ratings'. In the funerals industry, a future funerals regulator could include a standard in their regulatory framework which concerns itself with duties around transparency and provision of pricing information, in addition to any other standards or duties pertaining to 'back of house' activities.

**Non-confidential****Remedy design**

In addition to commenting on the overall proposal for a potential regulatory framework, we now comment on the specifics of how a regulator could regulate in practice, and how their involvement could best support the industry and the consumers it serves.

*Outcomes-based or rules-based*

- We support an outcomes-based regulatory model as opposed to a rules-based regulatory model. We believe a rules-based regulatory model would be far too prescriptive in an industry which is continually evolving and where there is a plurality of business models and consumer choice. Adopting an outcomes-based approach allows providers to have flexibility in how best to deliver outcomes and this should significantly reduce the risk of barriers to entry in the profession, along with reducing a risk around hindering innovation.

*Applicability of any regulatory model*

- In line with our comments in the Executive Summary, we are fundamentally opposed to any degree of flexibility for a regulatory framework which would apply different standards by provider, for example, different standards applicable to supposed 'larger' firms versus supposed 'smaller' firms, such as independent funeral directors or new entrants.
- We would strongly reiterate that the largest player in the market is the independent sector. The three 'large' firms identified by the CMA have less than a third of the overall market share and, in the case of Funeral Partners, our market share is in the region of 3%. Applying remedies only to what the CMA has classed as 'large' players would not reach the majority of funerals in the UK, given the highly fragmented and local nature of the market, exemplified by the fact that it is independent operators who carry out the overwhelming majority of funerals in the marketplace.
- Furthermore, enforcing differing minimum standards of 'back of house' by provider will be wholly distortive of competition, given the fact that the funerals market operates predominantly locally.
- In addition, we believe that segmenting providers in this way (for example by allowing certain providers to provide 'lesser' standards or be subject to less regulation and reporting at any point in time) would contradict the basis for any such minimum standards existing in the first place i.e. the need for a consistent, level playing field amongst all providers. In our view, any 'back of house' regulation must aim not only to prevent consumer detriment (through minimising the risk of poorer standards of care being in existence) but must also aim to enable more effective comparisons to take place between providers (based on a certain minimum standards being in existence, reported on, and applicable to all providers at all times).
- Moreover, we believe that to introduce any flexibility in the regulatory model would go against the core principles concerning the regulation of care quality, which will be a significant area of scope for a potential regulatory regime. CQC guidance, for example, describes how providers and managers are to meet the regulations through fundamental standards i.e. the standards below which care must never fall (for any provider).
- Finally, we would reference our comments above that an outcomes-based or principles-based approach to regulation would, we believe, allow sufficient flexibility to minimise the risk of barriers to entry and would, we maintain, encourage flexibility and innovation in relation to how best to achieve the desired regulatory standards, without the need for any segmentation, such as segmentation based on the size of a firm.

*Geography*

- We believe a UK-wide regulatory model would be of most benefit to consumers and that any framework would need to be flexible enough to accommodate religious and/or cultural differences which may exist and/or which may prevail in certain geographies.

**Non-confidential**

- Here, we would continue to reiterate our support of an outcomes-based regulatory model, as opposed to a rules-based regulatory model (which we believe would be far more complex and onerous on providers and limit the ability to effectively serve a very diverse customer base with a very wide variety of requirements).

*Refrigeration*Necessity

- We believe every funeral director must have either on-site refrigeration or have access elsewhere. Access to refrigeration must not extend to the use of 'publicly-owned' third parties, such as hospitals, unless a formal contract/SLA exists for the provision of such refrigeration services.
- In addition, the opportunity to bid to use such facilities needs to be well-publicised and open to all funeral directors. Furthermore, any third-party refrigeration offered through another provider/another funeral director must ensure detailed arrangements are in place covering aspects of identification procedures, shared access and security of the deceased and their possessions and, importantly, what would happen if capacity were to be compromised during busy periods.
- If the funeral director in question were a member of a trade association, we believe the firm with which they contract to provide such facilities would also need either to be a member, or to allow certain elements of trade association oversight of ways of working.

Ratio

- Generally speaking, we believe a ratio of one refrigeration space for every 50 deceased person taken into the care of the funeral director on average per year may be appropriate and may allow a degree of flexibility for peaks in demand, whilst not placing an unnecessary burden or inefficiency within firms.
- However, local cultural differences need to be considered if such a ratio were to be subject to regulation. For example, the ratio may legitimately need to be significantly different in areas where traditionally (or through religious or cultural grounds, for example), funerals take place within a few days, such as in Northern Ireland or where customers may predominantly be from a certain religion or faith, such as Jewish or Muslim.
- To reiterate our argument from above, we believe an outcomes-based framework may be more appropriate in relation to refrigeration rather than a prescriptive ratio or 'rules-based' regime.

Storage

- We do not believe it should be a requirement for each deceased to be stored individually in separate compartments within a refrigeration unit. We believe that the typical standard for such units in the UK for funerals, NHS Hospitals and public mortuaries is that enclosed units are instead 'open plan' inside, as opposed to there being individual compartments.
- We would argue that a requirement to move to all deceased being in separate compartments would be burdensome, unnecessary, as well as very costly.
- In relation to refrigeration, we believe what is important is that all deceased are stored within an enclosed cabinet or open cold room, where each deceased is covered and stored on its own tray, trolley, stretcher or coffin. In turn, this would preclude 'topping and tailing' or 'stacking' of the deceased, which we believe to be disrespectful and not in line with consumer expectations concerning deceased storage.

Training

- Funeral Partners is committed to high standards of quality when it comes to investment in its people. However, we do not believe that individual roles within the industry require qualifications from an official accreditation body in order for those roles to be effectively carried out. We provide certain reasons for this position below:

## Non-confidential

- We believe that mandating that certain roles in the profession must undergo certain externally-provided training/qualification regimes is overly interventionist, costly and impractical and it may also limit the diversity and talent available in the workforce.
- External training may duplicate a firm's existing internal training practices. At worst, external training may contradict a firm's internal policies, procedures, product specifications and/or particular business model, leading to confusion and inefficiency and potential customer detriment.
- Furthermore, we are not convinced that the infrastructure exists to provide such training and the additional costs of providing external accreditation would potentially increase prices for services provided by funeral directors and contribute to funeral price inflation.
- The market continues to evolve with online offerings (for example, 'direct cremation'), which is a growing proposition. Certain firms are also enabling funeral arrangements to take place wholly online, thereby removing the necessity for certain aspects of the arrangement process and associated roles. The training requirements for specific roles within the profession are changing all the time.
- Instead, we believe that there needs to be a degree of flexibility in order to allow firms to provide their own training programmes for their own particular business model and for the various specific roles which may exist in their individual business.
- Accordingly, at Funeral Partners, we provide internal teams with Funeral Partners' own set of comprehensive training which we believe addresses the key requirements of the profession and allows us to articulate our own points of difference. The training we provide also ensures that any existing obligations placed on us e.g. by trade associations, or other desired or required risk and compliance procedures, are incorporated.
- As such, we do not think it is helpful or meaningful to equate funeral expertise with certain levels of formal education (such as 'A' Levels), nor to stipulate minimum hours of training required annually.
- In an outcomes-based regulatory model, funeral firms should simply be required to evidence that relevant workers have been trained appropriately (either internally or externally) and to evidence that the firm has judged relevant workers in their business to be competent in order to achieve the desired outcomes, as stipulated by the regulatory framework.

*Alternative Dispute Resolution ("ADR") schemes and complaints*

- We support an independent ADR scheme and/or complaints adjudicator in addition to the funeral directors' own complaint handling and customer redress processes. We would note that the National Association of Funeral Directors ("NAFD") and the Society of Allied and Independent Funeral Directors ("SAIF") already offer alternative dispute resolution structures as part of their membership services.

*'Front of house' quality*

- As referenced above, we do not believe that a regulatory framework should focus on 'front of house' quality, which may extend to monitoring and reporting of 'front of house' quality, such as through customer service measures e.g. overall satisfaction and willingness to recommend.
- Instead, we believe that consumers are able to judge 'front of house' quality for themselves and we do not believe that there is significant value in further externally-imposed scrutiny of 'front of house' quality aspects enforced through such things as independent submissions by funeral directors, or periodic surveys of service quality, particularly given the generally very high levels of customer satisfaction which already exist concerning 'front of house' quality in the profession. Moreover, such quality measures may be difficult to judge objectively across the very wide variety of funeral products and services on offer.
- Instead, we believe publicising the outcomes of any 'back of house' inspections undertaken by the regulator is sufficient in terms of quality monitoring, in a similar fashion to the ratings display framework provided by the Food Standards Agency and associated with food hygiene.
- Further, if the regulatory framework included the requirement for all providers to publicise prices in the channels in which they operate (as referenced above) we believe this would introduce additional competitive pressure in the industry and support both 'back of house' transparency quality matters, as well as further price transparency matters.

**Non-confidential***Ongoing role of trade associations*

- Should a regulatory framework be established, this is likely to result in the changing purpose of certain organisation such as the two existing trade associations and commentators such as the Good Funeral Guide.
- We believe that there would still be a role for trade associations and other commentators who could still represent their members but in different ways e.g. through supporting firms introducing and overseeing any regulatory framework, as well as encouraging best practice and collaboration on key industry topics.

*Cost*

- We believe a regulatory framework could be funded by the industry itself, however, we would need much more detail in order to comment further and we would require an understanding of the one-off costs associated with compliance and then any ongoing obligations, based on a clear set of detailed proposals.
- In the meantime, we would note that funding models could operate in a similar way to that of the care sector and how the CQC imposes fees on care providers.
- We would note that any overly onerous regulatory requirements could have the unintended consequence of driving up funeral prices, particularly in the independent sector, which represents c70% of the market.

*Crematoria quality regulation*

- We note that the CMA has not extended its proposals for quality regulation to the crematoria sector. Funeral Partners is of the view that crematoria should form part of any 'back of house' quality regulation framework.
- It remains the case that 'back of house' standards (including care of the deceased) is a critical part of the role of a crematorium. Care of the deceased still takes place once the deceased is no longer in the care of the funeral director following the deceased passing from the funeral provider into the care of the crematorium.
- As such, to exclude crematoria from quality regulation in this regard would leave certain aspects of 'back of house' standards, including care of the deceased, unregulated. Critically, without 'back of house' quality regulation of crematoria, minimum standards would not apply nationwide to the full end-to-end journey of caring for the deceased.
- We believe consumers would expect that all aspects of 'back of house' quality, which extend to care of the deceased, would be subject to any regulation, not least as a result of certain concerns (which are typically misconceptions from certain consumers) around such matters as the re-use of coffins and the co-mingling of ashes.

**'Information and transparency remedies' Working Paper**

We now respond to the seven proposed remedies outlined in the 'Information and transparency remedies' Working Paper. As per our Executive Summary, we would note that additional commentary concerning potential price-related remedies (along with any additional and/or wider considerations concerning the Working Papers as a whole) will follow as part of our response to the deadline associated with the Working Papers published on 20<sup>th</sup> and 21<sup>st</sup> February 2020.

**Remedy 1: Price transparency and comparability**

Funeral Partners supports certain efforts to make it easier for customers to research prices and services and compare funeral directors before they meet a funeral director.



**Non-confidential**

However, when it comes to any potential remedy or set of remedies, we would comment that we think any measures to introduce improved price transparency and comparability amongst providers must at the same time be coupled with a 'levelling of the playing field' around 'back of house' quality.

We support the following options suggested by the CMA which we believe are both reasonable, practical and proportional. These include, but may not be limited to, the following:

- Making prices available online, over the telephone, or in branch (i.e. before the arrangement meeting with a potential customer).
- This includes providing disaggregated pricing for certain specific component prices and/or certain specific packages offered by the funeral director. This could extend to the price of a 'simple' or 'standardised' funeral with certain additional products/services being listed in addition to the 'simple' funeral cost.
- Providing guidance to consumers on typical disbursement costs which may be incurred in addition to the funeral directors' services.

We think certain options suggested by the CMA are inappropriate and may, at worst, be insensitive towards certain consumers. This includes, but is not limited to, the following:

- Providing prices to potential customers at their first point of contact over the telephone, irrespective of whether the customer has enquired about prices.
- Certain enquirers may not consider price to be the determining factor for their funeral. We believe that to be forced to introduce price discussions into a conversation where no price considerations are being mentioned by the prospective client may cause consumer detriment.
- We would note the CMA's finding in the 'Funeral director sales practices and transparency' Working Paper that 'The large majority of customers who responded to [the CMA's] survey felt that they had received the right amount of information at the right time' (Page 2, Paragraph 3) and 'Notably, nearly all respondents felt they had received the right amount of information about funeral options and costs and at the right time' (Page 27, Paragraph 78) with 88% of respondents stating that they felt that they received the right amount of information about funeral options and costs and only 2% stating that they got too little (Page 27, Footnote 65).

We think certain options suggested by the CMA are either wholly impractical and/or entirely unworkable. These extend, but are not limited to, the following suggestions:

Introducing an 'independent platform' to compare providers

- We believe this to be hugely interventionist, unnecessary and impractical as a potential remedy. A state-enforced and state-controlled price comparison would be wholly unworkable in terms of ongoing maintenance, and it would become hugely burdensome. For example, the CMA's suggestions that such a platform could include items such as flowers would be impractical. For example, flower choices are highly personal to a family and prices will vary based on the local floristry options available in local markets. Further, the cost of such items can be highly variable due to price fluctuations of products.
- In addition, we believe that there would be significant complexity and practicality constraints should disbursement information be required to be placed onto the platform, given the volume of options available to clients and the varying product components which make up the overall provision of disbursements throughout the country.
- At best, we believe such a platform may simply become a costly exercise with limited value and limited use by consumers.
- At worst, such a platform may restrict innovation in relation to the offering of products and services and cause consumer detriment. The platform may mislead consumers concerning the 'true' cost of their desired funeral based on their very unique choices, which such a platform could practically, we believe, never be able to accommodate.

## Non-confidential

- We do not believe that the industry can be easily commoditised in such a way as to make the platform meaningful and valuable to consumers. The concept of what a 'funeral' consists of continues to evolve over time and such a platform would fix and restrict product components.
- We believe a platform would be continually subjective when presenting back information to consumers. This would be wholly dependent upon algorithms which would be continually questionable (for example, in terms of listing presence and listing priority on the screen). As such, we believe the platform would be subject to ongoing accusations of being anti-competitive in terms of its execution. Furthermore, a state-controlled price comparison site would severely hinder the ability of private operators to provide similar functionality, which we believe again would be anti-competitive.
- We maintain that the vast majority of consumers select a funeral provider based on a small geography, as opposed to reviewing all providers on a national scale. This is reinforced by the CMA's own findings in the 'Funeral director sales practices and transparency' Working Paper such that 'Four-fifths of respondents told [the CMA] that the deceased lived within a 20-minute drivetime of the funeral director' (Page 2, Footnote 2).
- Rather than impose a platform which we believe would be costly, wholly impractical and of extremely questionable value (particularly in a market where consumers choose from a limited number of local providers) we would instead reiterate our support of a regulatory approach which would ensure that 'back of house' standards are judged and available to consumers for all providers, and for a regulatory approach which would mandate that certain aspects of pricing are displayed by providers themselves, in certain channels, at all times.
- We believe that this approach is much less severe in terms of the options available to the CMA and that it is much more reasonable, practical, proportionate and less costly. The approach may still deliver the outcomes which are aspired, which include objective transparency on 'back of house' quality standards for all providers, along with additional pricing transparency applicable to all providers.

National pricing

- We are strongly opposed to any remedy which may require a network of funeral directors to have the same price nationally. We believe that any such remedy may be in and of itself anti-competitive on the grounds that the funerals market operates locally. Furthermore, equating a specific network or a supposed 'large player' (such as those who may have a larger geographical presence) with having market power nationally is extremely questionable, given the market is highly fragmented and dominated by independents.
- To the extent that the industry operates locally, national pricing would penalise any supposed 'national' firm where any national pricing was mandated and, as such, it would be anti-competitive. Market exit in certain circumstances may also be an unintended consequence.
- In addition, the costs of doing business can and do vary throughout the country. Any national pricing framework would potentially penalise certain consumers who would be forced to pay more if all prices were 'national' (in those instances where local costs would ordinarily dictate a lower price than the national price). Conversely, any national pricing framework would potentially reward certain consumers who would be paying less if all prices were national (in those instances where local costs would ordinarily dictate a higher price than the national price).

Mandating prices are the same across all sales channels

- We believe this would lead to forced distortion of price and margins across those products/services being offered and that this would lead to unfair pricing methodologies being deployed. This would, in turn, be a detriment for consumers. For example, this would limit a firm's ability to charge less for services which may take place online, as opposed to in a branch. We would also assert that such intervention would stifle innovation within the sector.

**Non-confidential**Providing pricing information to local authorities

- We do not believe that providers should be required to provide pricing information to local authorities. We think this is wholly impractical. Product specifications and pricing are continually changing across providers, not least to deal with commercial competitive local pressures. As such, this solution is wholly unworkable.
- Instead, we would support local authorities and/or registrars being provided with up-to-date lists of local funeral providers for distribution with associated URLs, along with the provision of any commentary or generic advice around encouraging comparisons between providers from both a price and quality perspective.
- Further, if a regulator were to exist which prescribes that certain pricing information be placed online (as per Funeral Partners' suggestions above), it would then be a relatively quick and simple process for consumers to visit a provider's URL in order to review certain product offerings and compare and contrast prices for certain services online.

Price reporting templates

- We note a potential CMA proposal to adopt 'the same price reporting template whether the provider sells directly to customers or through a third-party platform'. We are unclear on the specifics of this proposal and we would require more detail in order to comment. In the meantime, please refer to our comments above in relation to Remedy 1 and our support of disaggregated pricing for certain specific component prices and/or certain specific packages offered by funeral directors.

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

We are supportive of appropriate third parties engaging with prospective customers about general funeral planning prior to the point of need, such as care providers engaging with residents and families at the point of a resident entering a care facility. At the point of need, we are also supportive of appropriate and sensitive guidance being provided to families about the options available to them concerning the provision of funeral services.

We do not believe that the platform referenced by the CMA (as referenced in Remedy 1 above) will be effective, nor do we believe it to be proportionate or practical. As such, we do not envisage intermediaries engaging in discussions with potential customers about any such platform.

Generally speaking, and in relation to this remedy, we would note the need for a clear distinction between the act of general funeral planning (which includes general awareness-raising around funeral providers) versus the specific act of purchasing a funeral plan. Such a distinction is particularly important given the potential regulatory framework being introduced around funeral plans.

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

Funeral Partners is supportive of proposals which may encourage awareness of funeral directors' services prior to the point of need.

However, we do not feel government-led and media-led campaigns may be the most beneficial means to achieve such an outcome, given the often temporary effectiveness and one-off nature of such campaigns.

Rather, we envisage sustained and appropriate interventions using the expertise and resources of relevant third-party organisations and intermediaries (such as GPs, care homes and hospitals) would be more effective.

Were it to be the case that the CMA recommend government-led and media-led awareness campaigns, we would expect any such activity to be paid for using general taxation, as opposed to any levy on the industry.

**Non-confidential****Remedy 4 – Mandatory ‘reflection period’**

We now comment on the different proposals concerning reflection periods.

*Imposing a mandatory pause or ‘reflection’ period between an arrangement meeting on-premises and before signing any contract*

Whilst we are supportive of the principle of allowing a customer to reflect on their choice of funeral director and, where appropriate, allowing a switch to another provider, we think the practicalities and unintended consequences of introducing and promoting a mandatory reflection period will outweigh the benefits and there may be negative unintended consequences. We elaborate further below:

- Were a mandatory reflection period to be introduced, providers may ‘hold off’ carrying out aspects of the funeral process until such a period was over. This may lead to inefficiency in the provision of services and increase overall costs.
- Moreover, we believe enforcing a mandatory reflection period may lead to significant consumer dissatisfaction as it may inevitably lead to delays with the funeral and a period of relative inactivity in relation to carrying out the client’s wishes and the funeral arrangements.
- If it were to be the case that, during a reflection period, services could still be carried out and any such services in turn billed to the client, this would inevitably necessitate ‘time and materials’ billing to the customer and a potential debate over the extent of any such services provided e.g. if a charge for care of deceased is made, would a proportion of this charge be made to the client *pro rata* and, if so, in proportion to what criteria.
- Such a process, we believe, could lead to additional bureaucracy, internal confusion and unintended consumer distress.
- Furthermore, in certain geographies and for certain religions, funerals tend to take place in a very short timescale following the death, and therefore a reflection period would be particularly difficult and potentially inappropriate to apply.
- We believe that the vast majority of consumers already have a provider in mind as a result of previous experiences of quality, and that there is already typically an ‘unintended reflection period’ for most consumers e.g. for deaths which occur in hospital. In line with Funeral Partners’ previous submissions relating to this matter, we believe that the occasions where consumers do not have any time to reflect on their choice of provider are rare.
- These instances would typically occur where someone dies in a nursing home, care home or hospice and where these care facilities do not have facilities to store the deceased, and where no planning or judgment about providers has taken place prior to the death. The CMA’s own findings as detailed in the ‘Funeral director sales practices and transparency’ Working Paper state that most consumers ‘will choose a local funeral director based on recommendation or previous experience’ (Page 2, Paragraph 4). Whilst the CMA states that this does not constitute ‘research’ as such, we would instead state and reiterate that the choice of a local funeral director (as a result of a customer’s perceptions over recommendations and previous experience) does in fact represent objective judgement-making and rational decision-making relating to their choice of provider.
- We believe that the majority of customers are, at the time of the funeral arrangement, confident of their choice of provider and do not require a mandatory period of reflection, which we believe may add further distress and delay to the sales process at what can be a difficult time.
- Instead, we believe it is more appropriate to focus on Remedy 2 and/or Remedy 3 in order to minimise the need for any mandatory reflection period, so that consumers have already reflected on their preferred choice of funeral provider before the point of need.
- For those consumers who, for whatever reason, have not determined their choice of provider before the point of need and which may extend to those consumers for whom price is a determining factor, we believe that Funeral Partners’ suggestion that a regulator oversees the requirement for pricing to be made available in certain channels at all times (such as online) will assist these consumers, without the need for an additional mandatory reflection period to be introduced into the process.

**Non-confidential**

- In spite of our argument above and, were it be the case that CMA impose a remedy introducing a reflection period remedy, we would suggest that the client should at all times be able to 'waive their right' to a reflection period in order to ensure that the funeral arrangement could proceed without delay, and that this would be particularly important for certain time-sensitive religious and/or cultural preferences which may exist for certain consumers.

Having cancellation rights for on-premise contracts in line with the cancellation rights for off-premise and distance contracts

- We believe that such a remedy is more appropriate to introduce than that of introducing a mandatory pause or 'reflection' period. However, we would reiterate our comments concerning Remedy 2 and Remedy 3 such that Remedy 2 and Remedy 3 would appear to be more appropriate in order to avoid the need for a requirement to make a change to cancellation rights.
- In addition, we would note that it remains the case that cancellation rights exist for those funerals arranged off-premises and at a distance already, and it remains very rare that these rights are, in fact, exercised. We believe this is due to the vast majority of consumers feeling comfortable with (as opposed to constrained by) their chosen funeral provider.
- In those very rare instances where the consumer may decide to switch provider, such costs would typically tend to be absorbed by the provider as opposed to charge to the client.

Allowing customers to choose a different provider or different services from the same provider at minimal or no additional cost

- We are unclear on the specifics of this proposal and we would require more detail in order to comment.

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

The CMA states that this remedy may address barriers to switching arising from additional charges that a customer may incur if they chose to take advantage of the opportunity afforded by a 'reflection period' and chose to switch to an alternative funeral director. The CMA states that the original funeral director may levy a charge to cover the costs that they have already incurred for the initial collection, transportation and storage of the deceased.

For the reasons outlined above in relation to Remedy 4, we do not agree with the proposal for a mandatory reflection period and we remain unsupportive of any price control remedy.

The CMA has stated that the 'activities of collection, transportation and storage of the deceased are relatively homogenous services in that they are not characterised by quality differentiation' (Page 23, Paragraph 94). We think this is vastly overly simplified and we think that such an interpretation treats this critical aspect of the funeral process as a commodity, as opposed to seeing this aspect of the process as a professional service, characterised by different approaches to quality.

For example, certain providers charge more for removals out of hours, as opposed to in-hours. Variation exists between providers when it comes to timescale commitment to remove the deceased from various locations. As a premium provider who places care of the deceased at the heart of our service, Funeral Partners has very high standards in this regard and incurs significant cost as a result. For example, we have an internal SLA to remove a deceased from a home within 1 hour of receiving a call from a client. We minimise the use of public mortuaries, on the understanding that it is generally speaking our clients' preferred desire to ensure that the deceased is in our premises and in our care in short order following death.

In addition, certain providers (which include Funeral Partners) incorporate elements of caring for the deceased very early on in the process of care and continue with extremely high standards of care on a daily basis until the funeral date. This extends to, but is not limited to, processes such as 'first offices', where certain tasks are undertaken early on in order to preserve the appearance of the deceased, along

**Non-confidential**

with daily checks on the deceased which include such things as reviewing the deceased for dehydration and provision appropriate treatment options, such as moisturisation. An unintended consequence of 'capping collection, transportation and storage' of the deceased could result in provides cutting back on certain aspects of care of the deceased, which we believe will result in consumer detriment.

Further, team members who carry out a removal of the deceased are a physical representation of the quality of the funeral director, and the cost of this quality varies considerably across providers. For instance, one firm may send two funeral operatives and a funeral director to attend a removal, whereas another may rely on two casual bearers. One firm may use a fully converted specialist vehicle, whilst another may send an unconverted estate car. In these examples, both cost and quality vary considerably. For Funeral Partners, the quality of the team members who interact with third parties (e.g. hospitals, care homes) as well as clients (for home deaths) all require training, uniform provision as well as high quality equipment including high quality private ambulances.

The unintended consequences of introducing a price cap in this area may give rise to lower standards in order to achieve lower costs for providers at this point in the process which, we believe, is critical we get right for consumers.

In line with the above, we believe storage of the deceased is inextricably linked with care of the deceased. As the CMA has itself recognised, care of the deceased is an area where quality currently differs and, even if minimum standards were set, providers could go above and beyond minimum standards in order to differentiate themselves from the competition. Placing a price cap on the 'collection, transportation and storage' of the deceased will in turn limit a provider's willingness to go above and beyond the minimum standards given the price control element of the product, and we believe that this will have a direct impact on the quality of care of the deceased.

In addition, there would be numerous practical implications concerning any introduction of a price control in this area. For example, how would any new provider charge for the ongoing care of the deceased, if a proportion of this aspect had already been paid to the previous provider.

We believe that introducing such controls and the CMA referencing such things as 'daily charges' for storage begins to commoditise this aspect of care of the deceased in a way which will cause significant consumer distress.

For those clients who currently choose to switch provider, this is typically sensitively handled between providers and may, from Funeral Partners' perspective, typically take place without the client incurring additional costs. This position of lack of charging the client would be likely to change in the event of an externally-imposed process and pricing structure being implemented.

On a localised basis many funeral directors do not charge for removal or storage of the deceased if the family decide to change funeral director, however, introducing a capped charge for such a service could have the unintended consequence of adding costs to families.

**Remedy 6 – Managing conflicts of interest**

We are supportive of improved management of conflicts of interest in the profession so that certain obligations apply to the whole profession and so that certain aspects, such as referral fees for recommending a funeral provider, are prohibited.

We would note that, as members of a trade association, Funeral Partners is already constrained in by the NAFD in certain regards and we would note and support the fact that presence on price comparison websites should not be deemed as a conflict of interest.

We would also note that we do not believe conflicts of interest arise through general community engagement e.g. by funeral providers interacting with care home and hospital teams and through the provision of support of these organisations through sponsorship, charitable fund-raising and local relationship-building. Our belief in this regard assumes that all such dealings entail no financial commissions or inducements on either side. Instead, we believe that these activities represent

**Non-confidential**

awareness-raising concerning the presence of individual providers in the local area and that they enable a firm to demonstrate the quality of their provision, in particular, prior to the point of need.

In relation to commissions for at-need funeral services, Funeral Partners does not have a policy of offering commission on any product or service and it does not encourage 'upselling'. Accordingly, we are supportive of industry-wide prohibitions around any such practices, where they may currently exist.

**Remedy 7 – Disclosure of business ownership and other commercial relationships***Disclosure of some forms of commercial relationships, such as vertical integration*

We are in favour of the disclosure of commercial relationships where vertical integration may be relevant, such as in relation to funeral directors who also operate crematoria. Certain vertically integrated providers could seek to gain growth by taking advantage of their position in the market through offering preferential rates at crematoria to customers of their own funeral homes, giving them an unfair advantage and to the detriment of consumers.

*Transparency of business ownership*

We support transparency of business ownership. As discussed with the CMA at Funeral Partners' Hearing in July 2019, we would note that it is a natural progression that some independent funeral homes will want to sell their business and it is key in this respect that the goodwill in the name above the door can be retained, both in terms of the value of the business being acquired and for those consumers who value continuity of the name for historic reasons, even if ultimate ownership changes. Funeral Partners' model in relation to former owners is to encourage the former owner (along with any of their relatives) to be retained in the funeral home in order to continue the family-run tradition.

Provided that there is clarity regarding ultimate ownership, we consider it is of great benefit to all concerned to retain the existing goodwill associated with the name of the acquired businesses. Retaining trading names (regardless of ultimate ownership) is an established business model across almost every sector of business (including professional service businesses). We believe that the current practice of displaying ownership both externally, internally and on printed materials and contracts, is adequate in terms of transparency.

Should it become the case that the industry becomes regulated, similar practices could continue and be mandated to happen across all providers (including smaller regional chains) as part of the regulatory framework, and these practices would then not just be applicable to those providers who are currently members of a trade association.

In relation to the proposal to inform customers of any changes in ownership, such as when an independent funeral director is acquired by a larger multi-site operator, we believe the existing transparency regime covered by the NAFD (and which could potentially be adopted by a regulator) will achieve the desired outcome.

In relation to disclosing information to customers such as a change in staff, we do not understand the specifics of this comment and we would require more detail before we can comment further. We would note that any such requirement would have to be applied across the whole sector and not just supposed 'large' firms.

**Comments pertaining to other Working Papers published on 30<sup>th</sup> January 2020**
**'Funeral director sales practices and transparency' Working Paper***Restriction of customers' ability to purchase coffins from third parties*

- Funeral Partners does not prohibit customers from purchasing coffins from third parties. We would note that care would need to be taken regarding purchasing options for consumers when it comes to the provision of certain products, such as coffins, by third parties. For example, in

**Non-confidential**

order to avoid customer distress and/or liability issues, coffins must meet certain safety and environmental standards, and there are specific regulations around coffin acceptance at individual crematoria. Any policies in this area would need to ensure products sourced from third parties comply with agreed standards.

*Restricting customers' choice of celebrant*

- Restricting a client's choice of celebrant is not a feature of the market which Funeral Partners recognises. If this were to be happening, we believe the circumstances in which it arises are isolated and limited.
- Funeral Partners does not restrict a client's choice of celebrant. Typically, we would listen to the client's wishes regarding any preferences in this regard and try to accommodate the client's wishes should they have specific individuals in mind.
- In those instances where the client seeks our support to find a celebrant, we would present them with a choice of local celebrants known to us, and we would encourage families to meet a celebrant before making a decision. On a local basis, Funeral Partners remains open to celebrants making themselves known to our funeral homes.
- Celebrant activity is generally unregulated and qualifications are often unrecognised. We would welcome further guidance in relation to certain celebrant-related activity in the profession.

*Offering legal services during the arrangement meeting*

- Funeral Partners supports the ability of funeral directors who may offer legal services options to its clients, and we think this supports, rather than restricts, competition when it comes to the legal services sector. We would state that it should be the case that transparency of the provider carrying out the legal services should be clear to clients as part of this process.

*Customer experience of at-need purchases*

- We noted the CMA's findings in Paragraph 79, Page 27 of the Working Paper that the 'large majority' of respondents to the CMA's survey stated they:
  - did not feel rushed into making choices
  - understood that they would face third-party costs
  - received a verbal estimate, written estimate, and/or a written quote during the arrangement meeting
  - reported paying a cost that was comparable to the estimate/quote provided
  - felt the funeral director met their expectations and would recommend them
- We would reiterate our comments in the Executive Summary that there are high risks of unintended consequences emerging from any remedy which the CMA may impose which may disrupt the at-need purchase process of the funeral. Such disruption may run this risk of adversely affecting the high levels of customer satisfaction which the majority of at-need customers are currently encountering.

*Embalming*

- Funeral Partners reviewed the CMA's assertion in Paragraph 104 that 'in general, we note the oversupply of embalming could be consistent with there being a substantial proportion of deceased who are embalmed but not viewed' and the assertion in Paragraph 106 where the CMA references the extent of potential embalming oversupply, 'given that there could potentially be occasions when a family purchase embalming and view the deceased, but embalming provided no benefits'.
- The inference that embalming is less relevant or of no benefit to the client/family unless the deceased is viewed, and/or unless there is a longer period of time between date of death and date of funeral is, we believe, flawed.



**Non-confidential**

- It is a fact that any deceased may quickly deteriorate at any point following a death. We believe it is a fact that embalming will, in many instances, prevent such deterioration. Deterioration of the deceased may cause distress to families who would not want such deterioration to take place at any point following the death, and the desire for a deceased not to deteriorate may have no relationship to the family's desire to view.