
London Cremation Company
Submission In response to the CMA's Funeral Market Investigation
Working Papers Published 30 January 2020

London Cremation Company Comments on CMA Working Papers dated 30 January 2020

1. This paper pertains only to the content of the working papers produced by the CMA on 30 January 2020. The LCC will be providing a separate paper with comments regarding the Working papers published on 20 February 2020.

Pricing evidence and potential for a price cap

2. The CMA has to date analysed the prices of crematoria services and indicated that they are considering price regulation for crematoria. The CMA analysis claims that there have been price increases across the industry. One operator has increased prices by 99% over the 10-year period between 2008 to 2018. The inflation in that period was 30.0%¹. By contrast, the LCC is well below these rates of increases and has increased its investment and expanded in that time, [£] (An approximate average price is £820 for crematoria services). This is despite meeting significant costs of mercury abatement equipment which for historic reasons have been largely paid for by the private sector, and which account for a significant part of the private sector pricing premium.
3. CAMEO (Crematoria Abatement of Mercury Emissions) was created as a burden sharing scheme for crematoria, after regulation on emissions for cremation required crematoria to reduce mercury emissions by 50%. 23% of crematoria (all of which were operated by Local Authorities) indicating they would have to close if forced to purchase a mercury abatement plant.
4. Some Public Sector crematoria did invest in mercury abatement plant. Any new build crematorium would have to include mercury abatement plants.² The LCC currently

¹ Office for National Statistics.

² Paragraph 2.6, DEFRA Guidance for Crematoria
<https://www.cremation.org.uk/content/files/PG5-2%2812%29.pdf>

estimates the number of crematoria with mercury abatement plants to be about 70% to 75%.

5. It is important to recall that the LCC is a company majority owned by the Cremation Society of Great Britain, a charity established in 1874 to promote the use of crematoria, and whose aims include the provision of cremation services to as many people in the United Kingdom as possible. [38].
6. In the Crematoria Outcomes Working Paper, the CMA specifically states that the LCC has the lowest price per minute of service.³
7. The evidence disclosed to the CMA shows that crematoria face competition in their local area. Crematoria with competitors within a 30-minute drive tend to have lower prices, and these prices become lower the closer the two crematoria⁴.
8. LCC believes that there is no evidence before the CMA to support a UK wide price cap. On the contrary, the evidence that is disclosed shows that there is competition in certain parts of the UK – but probably not in others. This lack of evidence should now be rectified, and the CMA should more precisely define the areas and locations in the UK where competition is taking place and define the boundary between those areas and less competitive or non-competitive locations.
9. The methodology adopted by the CMA and the questions asked by Ipsos Mori in its Mystery Shopper analysis do not currently permit the CMA to make a definitive decision on the competitive areas and accurate boundary between them and less competitive or non-competitive areas.
10. As stated in the LCC's submission of 18 December 2019, the MEAV analysis does not provide the CMA with an appropriate benchmark for a price cap, as it assesses profitability on the output of land values based on averages of all locations rather than values at competitive or uncompetitive locations. Reliance on such an approach would involve taking into account irrelevant factors. [38]. A model utilising land values to regulate price must therefore read on average values – but it would then be a national or geographic price cap with segments too large to be accurately representative of the competition issues.
11. The LCC proposes that any price cap is imposed only where there is truly shown to be a problem with local competition. It should be geared to the conditions of that locality or

³ Paragraph 21, Crematoria: Outcomes

⁴ Table 2, Appendix to Crematoria: evidence on competition between crematoria – Econometric entry analysis

there is a serious risk of unintended consequences, especially in competitive areas in which there is the possibility of undermining efficient market entry.

Geographic competition

12. The CMA finds that crematoria face a limited number of competitors in their local area. Crematoria with competitors within a 30-minute drive tend to have lower prices, and these prices become lower the closer the two crematoria⁵. There is a link between location and price.⁶
13. The “cortege speed” that the CMA has adopted to define its isochrone model is also unreasonably low and is not based on the facts of actual end user behaviour. It is an assumption that is unlikely to reflect conditions in different parts of the UK. For central business districts within urban areas such as the major cities it may in fact be relevant and realistic; for sub urban areas it may or may not be correct, given that drive times will vary considerable depending on the proximity of trunk routes and fast roads, whereas the average speed for more rural areas will also vary considerably by catchment area and location, so the numbers taken are likely to be insufficient and misstate the extent of competition by location.
14. It would also, if relied on, without other evidence to support its relevance, potentially reinforce a geographical segmentation that is to the benefit of certain market participants and limits the analysis and extent of the true geographic competition between crematoria to the detriment of end users. There are many significant issues with the approach in the papers on this crucial question:
15. The Crematoria: Overview and Market Structure paper, states that the speed estimates are based on the absence of a response to requests to Dignity and Westerleigh, rather than analysis of actual consumer behaviour.⁷
16. In the Crematoria: Outcomes paper, a Dignity internal document is directly quoted as the basis for the 0.6 speed factor.⁸
17. In the Final Report (fn229), the CMA mentions using speed limits to model drive times. This is likely to be inaccurate: the official statistics from the Department for Transport give the average road speed for urban and rural areas as 19.3mph and 37.2mph respectively.⁹

⁵ Table 2, Appendix to Crematoria: evidence on competition between crematoria – Econometric entry analysis

⁶ Paragraphs 80-81, Crematoria: evidence on competition between crematoria – Econometric entry analysis

⁷ Crematoria: Background and market structure, fn 17.

⁸ Crematoria: Outcomes, fn 22.

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508525/analysis-of-travel-times-on-local-a-roads.pdf

18. Appendix C to the Market Study is also specified as being based on “normal speed,” i.e. non-cortege driving times, but it is unclear what the basis of this speed is.
19. There is a need for clarity and evidence of actual user behaviour on this crucial point.
20. Please also note that providers such as Westerleigh and Dignity recommend a cortege travel speed of 20mph.¹⁰ Even so, there are locations where this guideline is not followed, for instance in rural districts where longer distances may need to be covered.
21. The application of an unduly low speed as a factor in assessing geographical competition would not be an evidence based assessment of the actual speeds nor would it reflect the evidence of recommendations from major suppliers- and it would provide an inaccurate basis for the assessment of the actual nature and degree of competition between crematoria.
22. The CMA claims that quality of the crematoria does not affect which crematoria customers use with the exception of a small percentage of customers. It is not clear that this follows from the data presented. Another interpretation of the data is that high quality facilities are charging higher prices, and that they happen to have been built further away from competing facilities. It does not necessarily follow that their pricing is anti-competitive.

Capacity and utilisation of crematoria

23. The CMA has found that competing crematoria within a 30-minute drive time are not likely to be a competitive constraint if they are capacity constrained. In principle if no capacity exists to fulfil demand then it would be entirely reasonable to conclude that no competitive constraint can operate. However, a combination of assumptions around drive time and what constitutes available capacity is likely to seriously lead the CMA into error.
24. Capacity constraints are thought to exist from 60-75%,¹¹ although the precise specification of this crucial question remains unclear, with references both to industry submissions and to a 60% figure based on first principles (10 AM – 4 PM slot utilisation)¹². In many settings, this is likely to be based on assumptions that are too conservative. As much as 40% spare capacity can be present, i.e. almost half available for use, and yet such a facility is not identified as a competitive constraint. Even in

¹⁰ <https://www.dignityfunerals.co.uk/advice/funeral-procession-etiquette/>

¹¹ Paragraph 53, Crematoria Background and Market Structure

¹² Paragraph 52(a), Crematoria Background and Market Structure

terms of “core booking hours” there appears to be a requirement for an excessive level of spare capacity identified as being necessary for competition.

25. More broadly, core hours may vary as needed, and the impact of direct cremations in “off-peak” times, whilst still to be evaluated, should also be considered. Simply applying a time-based capacity estimate is not likely to be sufficiently robust in this context.
26. Furthermore, there is evidence that new entrants are required in parts of the country to meet higher than expected demand¹³. This also shows that demand is not consistent or constant, but varies geographically and quickly changes.

Market structure

27. The CMA sees entry as beneficial and has looked into planning and entry.¹⁴ However, it accepted submissions from industry that there are few sites available (10-12),¹⁵ and does not accept that planning law is an enduring barrier to entry.¹⁶ This does not accord with the LCC’s experience.
28. There seems to be a serious risk that the CMA has accepted industry submissions which do not accord with either past market dynamics (e.g. significant entry by Dignity) or with market context. If as the CMA has noted, there is scope for 600-1100 death per annum facilities, then there is significant scope for new building. The industry easily raises finance and can depreciate assets over a long period.
29. Importantly, this would address the perceived capacity constraints. It is unclear how the working papers rely upon capacity constraint as a justification for asserted pricing power, while also accepting that barriers to new entry are low. Care is needed here, as there are strong incentives for those who have built to argue that new entry is not possible, so as to achieve pricing regulation that will discourage further entry even where efficient.
30. In this regard, it is notable that many of the highest cost facilities are geographically isolated. Indeed, another reading of the CMA’s evidence on pricing is that high cost facilities exist in geographically dispersed locations, and are keen to prevent further entry using price regulation.
31. The analysis thus focuses on existing players, rather than whether entry can be promoted as a competitive constraint. The economic barriers to entry are said to be significant with the cost of recent new build crematoria having ranged between £3.4m

¹³ <https://horizoncremation.co.uk/horizon-submits-planning-application-in-doncaster/>

¹⁴ Paragraphs 63-65, Overview of Key Research and Analysis

¹⁵ Paragraph 70, Crematoria Background and Market Structure

¹⁶ Paragraph 62, Crematoria Background and Market Structure

and £8.5m, but this is depreciated over a long period of time. The CMA has taken evidence from many others stating a new crematorium would need between 600-1100 cremations a year to break even and has conducted capacity analysis of the impact of entry on capacity use.

32. However, there is no clear analysis of the critical impact of *entry* (as opposed to *rivalry*) on price, but instead an acceptance of a (self-interested) submission claiming no demand for further building, rather than testing why entry would not discipline price if planning is no constraint and scale is as little as 600 cremations a year. The analysis instead focuses on *static* pricing dynamics, which do not address these dynamic points.

Entry

33. From 2008 to 2018, 46 new crematoria entered the market. Only two were local authority facilities, whereas 44 (95.5%) were private.¹⁷

34. In other words, 15% of the 303 crematoria in the UK were replaced in just ten years, demonstrating that entry is possible. As a crematorium has a long working life of as much as 50 or more years, 15% new capacity in a single decade, in addition to replacement, is significant.

35. Crucially, the new entry is concentrated in private providers. The paper notes a total of 113 private crematoria in the UK.¹⁸ 44 were built within the past ten years (40.7% of private capacity).

36. It can be noted:

- a. This is a radically different picture from that which may have been painted by incumbents with vested interests in preventing more efficient entry: there appears to be a contestable market in new builds, with a strong shift towards private provision.
- b. Local authorities are hardly building, so if there is potential for problems from capacity constraint, it will likely only be met by private building based on recent experience.¹⁹ This suggests significant risk to capacity growth if incentives to build are undermined.
- c. Many local authority crematoria were built in the 1950s (e.g. Phase 1 Final Report, Figure 1). 140 facilities were built over 50 years ago and although many have been

¹⁷ Crematoria: Overview and Market Structure, para (7)

¹⁸ Id., (15)

¹⁹ Id., (54)

refurbished, they are near the end of their lives. As these facilities age out, there will be an acute need to build.

37. The LCC agrees with the CMA's estimate of minimum efficient scale at 600-1100 cremations per year.²⁰ Especially in the context of robust building over the past decade with aging facilities due for replacement, there are significant opportunities for new building. The LCC also agrees that build costs are tolerable, in light of the available finance and the lengthy depreciation schedule for facilities.²¹ Indeed, it is unclear how capacity constraints could arise, given these facts.
38. However, the LCC strongly disagrees with the assertion that the market is mature, and that there are only 10-12 viable sites for entry.²² This does not accord with the LCC's experience, which is that there are significant possibilities for entry, particularly for smaller scale crematoria.
39. There is a significant prospect of smaller provider entry to drive down costs. [X]. It is dangerous to proceed on the assumption that this entry is not possible, while assuming away the constraints from planning law: the opposite of the LCC's experience.

Data and analytical quality and issue:

40. There is very high satisfaction with services used at crematoria. Price is not a reason for selecting a funeral or cremation service - people seem to go with recommendations indicating quality, and location as their primary reasons.
41. In the survey, people did not mention price or value for money (good or bad) in evaluating the services used unless prompted. They would recommend those they had used to others (unless they thought giving any recommendations on this topic was inappropriate).
42. People rarely considered more than 2 service providers - typically they even just went with the one recommended to them by someone they knew. Although some admitted to not comparing much, and others to committing without a full knowledge of cost, proceeding on the basis of these points understates the fact that reputation can be a strong competitive constraint: for example, if there is pricing pressure from funeral directors, their reputations may suffer. That customers relied on reputation and were, broadly, happy with the service, is if anything more consistent with a competitive market.

²⁰ Id., (69)

²¹ Id., (67) to (68)

²² Id., (70)

43. In the mystery shopping experience, good price info was provided in most cases spontaneously: (70 percent plus - a high percentage and well into the level that would normally be identified as a competitive level with significant and material competitive constraints. Yet the report interpreted this evidence of good pricing information as “not all”.²³
44. Importantly, it should be noted that price comparison websites exist and the concerns the CMA, while important considerations, do not appear to be borne out by current facts and are already in market as a constraint that should be modelled, rather than being an information remedy. Please see Annex 1 for evidence of this.
45. Most importantly, price comparison relates to the location of the person performing the search and enables that person to compare prices and services “near me” – that type of search will produce different results in different places in the UK – triggering different responses depending on how websites have been set up to respond- to both the location of the user and the location of the crematoria or funeral directors. This needs to be further investigated.

End user choice Funeral Directors (“FDs”) and Crematoria:

46. It is clear that end users do have information and do consider alternatives using on-line tools- which are likely to have increased over recent times given the trend for increased internet use over time, and by different age groups, in a way that is perhaps not fully appreciated from the Ipsos Mori focus on Funeral Director websites, and given its limited time horizon.
47. We attach at Appendix 1 examples of websites that can be accessed. These provide an illustration of online transparency informing user choice, and an additional mechanism through which end users can obtain information about location, quality and price of funeral services – and as can be appreciated they provide choices of crematoria and prices. As indicated in the Ipsos Mori investigation²⁴ the vast majority of end users have some idea of which crematoria they want to use before going to a funeral director. Another factor that needs to be carefully considered is the propensity for certain religious groups to be highly price sensitive which will also have a differential impact depending on location. These online tools inform end user choice and need to be taken into account in any consideration of the need for greater transparency.

²³ Page 11, Paragraph 1, Ipsos MORI mystery shopping report.

²⁴ C3 Customer Survey table

48. The CMA is presenting some findings unnecessarily and making points that are inconsistent with the evidence in a way that needs to be rectified. For example, the CMA finds²⁵ that the FDs have some impact on choice of crematoria where there is choice. It states that 47% of respondents said that there was only one choice of crematoria for them geographically. A majority, 53%, therefore did have a choice, being more than one crematorium, or where there may be two or three crematoria, but the question does not make a clear connection to the number of crematoria as the number of crematoria was not raised. In other words, it is unclear what intensity of competition is revealed by the survey.
49. The CMA therefore has not conducted the survey to reflect geographical competition, despite the finding of geographical competition in the working papers.
50. The CMA states that “only 29% of respondents” said that they had received advice regarding choosing a crematorium from their FD and 83% of respondents had used a crematorium within 30-minute drive of the deceased's home. However, the same survey shows that discussions with FDs reflects post-competition information, as most crematoria users came with an idea of which facility to use, based on reputation, i.e. competition for reputation: “Only 13%” said they explicitly asked for the FD's input regarding the crematorium. It is thus not clear that the survey, relating chiefly to FD interactions, demonstrates a problem with competition. Even if the FDs were the ones making the choices, they have not been asked how they make the recommendation. Either the questionnaire should have (i) surveyed customers on how they chose, if the decision was indeed theirs, as the data suggests, or (ii) surveyed FDs on how they chose, if the FDs are instead making the decision – but the survey only asked *whether* consumers chose, found that FDs did not, and then did not probe further on how competitive the options available to consumers were.
51. To gain a more complete picture, the CMA should ask FDs about their choices and how they compare crematoria; especially as this is likely to provide more evidence of geographic competitive constraints for locations of crematoria than the current survey.

²⁵ Paragraph 59, Crematoria: evidence on competition between crematoria