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Response to CMA Working Papers published on 30 January 2020

1. Introduction

The National Association of Funeral Directors (NAFD) is the largest and most inclusive trade association for the UK funeral profession. We represent the interests of the entire spectrum of funeral directing businesses – including independent and family owned firms, co-operatives and major funeral groups – and have more than 4,000 UK funeral homes in membership. Between them, NAFD member firms conduct the vast majority of UK funerals each year.

The NAFD firmly supports steps to improve the rigour of current inspection processes, the transparency of information to consumers especially on pricing, and measures to improve standards of education and training. However we believe the package of proposals put forward by the CMA in its 12 working papers represent a disproportionate and overly burdensome response to the market failures identified and to a sector dominated by small businesses where, as the CMA acknowledges, client satisfaction is high, quality is good and there are no significant barriers to entry.

We are therefore urging the CMA to engage constructively with the funeral sector on its proposals for more proportionate and less costly regulatory structures, to help the sector work even better for bereaved people. The NAFD stands ready to help in this process - which would lead to more timely and effective remedies.

2. Comments on the CMA's approach to consultation

On 30 January 2020, the CMA published and sought views on 12 working papers, totalling well in excess of 700 pages of information, analysis and proposals. Among other things, these papers set out, for the very first time, the CMA's detailed thoughts on whether an independent body should be set up to regulate the back of house standards and sales practices of funeral directors. The sector was given only 27 days to respond to these papers, during which the CMA published a further nine papers, setting out equally significant proposals within a similarly tight timeframe for response.

It is not reasonable to expect a small organisation like the National Association of Funeral Directors, let alone thousands of UK funeral directing businesses - in the midst of what the CMA already acknowledges to be their busiest time of year, due to a seasonal spike in the mortality rate - to fully digest and respond to such vast volumes of information in such a short period of time.

Given the importance and potential impact of the remedies being considered by the CMA, this approach can only be construed as indicating a lack of regard for the views and input of those who stand to be most affected by them.

Many of the questions posed seek views on the potential cost and/or impact of proposed remedies on funeral directing businesses. To answer these questions in any meaningful way, the NAFD would need to engage with our members. Indeed, the NAFD is arguably the best placed organisation in existence to do this. However, in the time available it has not been possible for us to fully utilise our elected committees, let alone engage with our wider membership.

The Government has published a set of consultation principles that give clear guidance to government departments on conducting consultations.¹ These include ensuring that consultations last for a proportionate amount of time, taking into account the nature and impact of the proposal(s). Overloading stakeholders with information and failing to allow sufficient time to respond will necessarily have the effect of reducing the number and quality of responses. It is therefore deeply troubling that the CMA has taken this approach.

Were the CMA minded to extend the period within which it will take submissions to the consultation on these working papers, the NAFD would be willing to engage with its members on an agreed set of questions/topics, to ensure that there was no risk of the CMA pursuing a course of action that was likely to result in unintended consequences for the funeral sector or detriment to bereaved consumers.

3. Overview of NAFD response

At the NAFD's hearing with the CMA Market Investigations Panel on 26 June 2019, the Panel invited us to set out ideas on alternative arrangements for the delivery of 'quality' regulation, and the oversight of transparency requirements, which did not involve new statutory regulation being established. The point was made that setting up a new regulatory structure is likely to be costly, with the costs being levied on funeral businesses and ultimately passed onto consumers, and there could be considerable delay in getting such regulation established because of the need for primary legislation to be passed.

In response, we proposed that the NAFD, along with the Society of Allied and Independent Funeral Directors, could establish an 'arm's length' regulatory process, with governance safeguards to ensure its independence from the two trade bodies, to carry out regulatory functions and to, eventually, be invested with statutory powers.

The NAFD has considered the 12 working papers that the CMA published on 30 January 2020, paying particular attention to the papers that set out potential quality regulation and information transparency remedies. While we do not agree with all of the conclusions that have been drawn by the CMA, the content of these papers significantly strengthens the case for our proposal.

We share the CMA's concern that, in the absence of a regulation, there is a risk that an increased focus on competition could lead to a race to the bottom in terms of quality standards. We also agree that transparency in the market, particularly in relation to online pricing, requires significant improvement.

However, it is also clear that CMA's investigation has not uncovered evidence that 'back of house' standards are generally poor or that unfair sales practices are leading to consumer detriment. On the contrary, all of the facilities visited by the CMA appear to have been of an acceptable to extremely high standard and 98% of the CMA's mystery shoppers reported that the funeral home employee they spoke to explained things clearly and used appropriate language, with 97% of callers reporting that they didn't feel they were encouraged to buy more expensive options.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1.pdf

Equally, given the significant presence of information shortfalls and consumer behavioural biases in the sector, it is not clear that statutory regulation will necessarily achieve all of the outcomes sought by the CMA.

This is not to say that there isn't a compelling case for improving regulation in the funeral sector. Indeed, this is something the NAFD has advocated for a long time. It is just important that this is achieved in a proportionate way.

For all these reasons, the NAFD has decided to set up an arms-length regulatory structure to monitor the quality of funeral director services. It will be independent of the NAFD in its governance and management, and open to non-trade association members.

The NAFD, through its complaint handling team and team of Standards and Quality Inspectors, is already carrying out many of the functions that would necessarily fall to a statutory regulator. These operational functions will be strengthened and transferred to the arms-length regulatory structure with limited disruption and, importantly, minimal additional cost. The NAFD's *Funeral-Directory* website will also be transferred over, and will serve as a platform for disseminating information about quality standards and pricing.

The creation of this new regulatory structure, taken together with a strengthened Code of Practice and transparency measures being developed by the Funeral Services Consumer Standards Review, will be a proportionate and effective means to deal with the main concerns the CMA has identified on quality and price transparency and negates the need for more expensive regulatory proposals.

4. NAFD comments on questions regarding Quality Regulation Remedies

Do you agree with our proposal to focus quality regulation on the services provided by funeral directors or do you think we should also regulate the quality of services provided by crematoria operators?

The NAFD does not have a strong view on this but notes that this approach would be in stark contrast to that taken in Scotland, in response to recommendations made in the Report of the Infant Cremation Commission headed by Lord Bonyon, which was published in June 2014.

If the case for regulating funeral directors is that: a) the public would support this; and b) increased competition could result in quality dropping in relation to unseen service aspects, it is unclear why the CMA thinks the same would not apply to crematoria.

The NAFD supports the voluntary Crematorium Inspection Scheme, currently run by the Federation of Burial and Cremation Authorities (FBCA). The CMA may wish to consider whether a proportionate course of action would be to recommend that the FBCA be granted statutory powers.

Do you agree with our proposal to focus quality regulation on back-of-house standards?

The NAFD would advocate a holistic approach to regulation of the sector. We can see that the case for regulating unseen 'back-of-house' standards may be strengthened as a result of action taken by the CMA to encourage greater competition in other areas, such as price. However, this does not mean that there is no case for regulating standards of other aspects of service, such as funeral directors' front of house facilities and staff interactions with families.

The CMA will appreciate that purchasing a funeral is an unfamiliar transaction for most consumers, with many having no useful point of reference against which to assess standards. Of the small proportion of consumers that purchase multiple funerals at regular enough intervals to allow them to make a

meaningful comparison, the CMA's own research suggests a large proportion will simply use a provider they have used before.²

In light of all this, it is clear that the ability to observe quality standards is only of limited use to consumers. A grieving consumer may be able to tell when observable standards are at the absolute lowest end of the scale but this is not where we should set the bar.

The CMA has highlighted the importance of 'front of house' criteria to the consumer experience in the recent mystery shopping report, carried out by IPSOS MORI. While we appreciate that some of the findings of this report will be covered in transparency remedies, other aspects of the exercise would not be covered under transparency remedies and fall squarely under the assessment of quality standards.

These include:

- Whether the caller was able to get through/speak to the right person easily.
- How effectively the call was handled/whether the person they spoke to was properly briefed.
- The appropriateness of language and terminology used in the call.
- Whether the consumer felt any pressure during the sales process.

The same criteria would be true for anyone visiting a funeral home, either to seek information or to arrange a funeral and, in addition to assessing the quality of staff interaction, it is also important to ensure that the facilities set aside for such meetings are appropriate (e.g. a private, comfortable room – away from busy operational areas such as the mortuary, coffin workshop, office etc.).

In particular, choosing language poorly can have a profound impact on bereaved people and their experience of the grieving process. While the bereaved consumer may not be able to articulate in advance how they would rate inappropriate use of language, a plurality of evidence suggests they will certainly feel its effects, sometimes for many years, if the professional they have dealt with has used language carelessly. Checking how effectively funeral service staff are trained to handle sensitive conversations - and what training/guidelines the business uses to guide these - will be central to the effectiveness of any quality standards assessment.

We therefore believe a regulator could add significant value by ensuring that front-of-house facilities and sales practices and standards of consumer care do not fall below an acceptable standard.

What are your views on the likely effectiveness and proportionality of the remedies outlined in this working paper in addressing our initial concerns?

The NAFD believes that 'right-touch' regulation is needed: mandatory, government-backed and with real 'teeth' - but also proportionate, risk-based and encouraging of best practice. In a fragmented and localised market, dominated by independent and family-owned businesses, some of the CMA's proposed remedies are likely to significantly increase costs for smaller companies - which is likely to ultimately lead to a diminution in competition.

We would like to see a risk-based and proportionate approach, which ensures that funeral firms of all shapes and sizes are able to work within its structure - avoiding this risk of a reduction in competition in the market - or of significant price rises due to companies passing on the costs of regulation to customers.

² [Funerals Market investigation consumer survey results \(30 Jan 2020\) Paragraph 40.](#)

For these reasons, the NAFD has decided to establish an ‘arm’s length’ regulatory body (ALR), with governance safeguards to ensure its independence from the two trade bodies, to carry out regulatory functions, and to eventually be invested with statutory powers.

The ALR will be in a position to deliver the substance of CMA’s proposed remedy of the establishment of a funerals regulatory body, building on the trade associations’ expertise in the delivery of regulatory functions, without the need for an entirely new body to be established and the associated additional cost that would involve:

An appropriate body to enforce standards

NAFD and SAIF already set Codes of Practice for their members, inspect their members’ premises, run conciliation and adjudication services to deal with consumer complaints, and have processes for disciplining members (including the sanction of expulsion from membership) if they persistently fail to meet acceptable standards. In short, NAFD and SAIF already carry out many of the functions with respect to their members that the CMA envisages a regulator would carry out with respect to all funeral directors and therefore have the much of the infrastructure in place to take on the regulatory role proposed by the working paper.

The CMA has expressed doubts over the suitability of NAFD and SAIF to monitor and enforce compliance due to the potential for conflicts of interests to arise from the balancing of our representative and regulatory functions. The creation of the new and independently governed ALR will overcome this problem, by ensuring there will be no overlap of operational decision-making between the new regulatory body and the trade associations.

The ALR will be set up as a Community Interest Company (CIC) and will have its own Board to govern regulatory activities, with Board members who will not be involved in NAFD or SAIF’s representational or advocacy functions. The Board will have a lay majority, in line with the Legal Service Board’s Internal Governance Rules for Approved Regulators (ARs). It is envisaged that both NAFD and SAIF would be corporate members and hence have responsibility for setting the broad constitutional arrangements in Articles of Association.

We have been in discussions with the Chartered Institute of Legal Executives to explore how arrangements embedding these principles work in practice, and has been encouraged by the positive light in which these are viewed. We intend to use the Legal Services Board’s rules, as far as is proportionate and practical, to determine the governance of the regulation of funeral directors.

Clear minimum requirements for funeral directors

The new regulatory body will initially adopt the Code of Practice, the principles to underpin inspections of funeral homes, and standards on price transparency currently being developed by the Funeral Services Consumer Standards Review (FSCSR). It will set its own procedures for dealing with complaints and disciplinary issues. It will then be the responsibility of the regulatory body’s independent Board to keep the Code, principles, standards and disciplinary procedures under review and consult with those affected before making changes.

The collection and dissemination of information to consumers on the quality of services provided by funeral directors

The NAFD currently operates an online information platform called *Funeral-Directory*, on which all of our members are listed and can be searched based on a postcode/geographical search.³

³ Funeral Directory can be accessed at the following weblink: <https://funeral-directory.co.uk/>

We intend to transfer ownership of *Funeral-Directory* to the new regulatory body so that the platform can be opened up to non-NAFD member firms and adapted to make information about quality and regulatory compliance accessible to consumers.

It is envisaged that this platform will also be used to make certain key service offering information, including pricing information, is available to consumers. We will discuss this in greater detail in our response to the questions posed by the information and transparency remedies working paper.

Effective monitoring and enforcement of standards through, for example, a statutory licensing and inspection regime

This is the only element identified by the CMA that the NAFD is unable to satisfy through the establishment of a new regulatory body.

In principle, the NAFD is in favour of a statutory requirement for all funeral directing businesses to register with a regulatory body. However, we are conscious that the immediate implementation of such a requirement is likely to take considerable time and is certain to carry significant cost.

Considering the lack of evidence that the standards of service offered by funeral directing services are generally poor, we do not believe that it would be proportionate to implement such a requirement with immediate effect.

The CMA could however consider recommending that the Government should allow the new regulatory body time to become established before considering whether or not it should be granted a statutory remit.

Are there any other potential remedies that we have not considered in this working paper that may address our initial concerns (as set out in our working paper on the quality of back of house funeral director services)? Please explain what those remedies are and why they would be more effective than, or suitable in addition to, our proposed remedies.

The CMA has not specifically considered the remedial action being taken by the NAFD. We ask that consideration be given to the extent to which this action will address the CMA's initial concerns.

Would a predominantly outcomes-based or a rules-based regulatory model (see paragraphs 39 to 40) be more appropriate for monitoring and upholding the back-of-house standards of funeral directors? Please explain your answer.

The NAFD agrees with the FSCSR's recently published recommendation that an outcomes-based regulatory model, combined with a risk-based approach to the enforcement would be most appropriate. This will allow businesses the flexibility to meet regulatory requirements in ways that make sense to them, rather than prescribing rigid rules that could place some firms at an unfair disadvantage.

The UK funeral sector is richly diverse, with service providers ranging from small family businesses to large corporate groups. This variety allows consumers a great deal of choice when selecting their funeral director but presents a challenge when seeking to set out strict regulatory rules that can be applied to the entire sector.

In our view, an appropriate approach would be for a regulator to determine what the desired outcome should be and to require businesses to explain how this has been met. Provided all regulatory requirements have been met, it should not matter how the firm achieved this. This will help prevent regulation from having a disproportionate negative impact on any particular type or size of business, while ensuring the consumer interest is not compromised.

Which of the services provided by funeral directors should be included under the scope of any quality regulatory regime, including statutory minimum standards, and why?

Refrigeration

We believe that having access to refrigeration is necessary for any business seeking to provide appropriate care to people who have died. It is envisaged that all firms that register with the new regulatory body will be required to demonstrate that they have access to suitable refrigerated mortuary facilities.

However, we would caution against setting an inflexible capacity measure, such as a ratio. Refrigeration is arguably the biggest capital expenditure in a mortuary installation and, cared for properly, refrigerators have a significant maintenance (not to mention environmental) cost. That cost will be reflected in the cost of operating the funeral business, and therefore funeral prices. It is therefore important that businesses are not required to obtain additional capacity that they do not need. For example, for religions where usual practice is for the funeral to take place within a day of death, the costs of meeting the requirements of an inflexible refrigeration ratio are likely to be disproportionately high.

Conversely, there is a risk that, by prescribing a specific number of refrigeration spaces, regulated parties will focus solely on achieving compliance with this requirement and will lose sight of the outcome it is seeking to achieve. It would be counterproductive if businesses were able to rely on their compliance with a set ratio to justify their failure to adequately provide refrigeration for the deceased people they take into their care.

It is not clear exactly how the ratio of 1:50 has been determined. While this ratio does not seem particularly unreasonable, we wonder if it might be too general to be usefully applied to all types of funeral business. For example, a rapidly expanding business is unlikely to have sufficient capacity if it projects how many refrigeration spaces it needs based on the previous year's figures.

In the spirit of outcomes-focused regulation, it seems more sensible to require all funeral directors to take reasonable steps to ensure they have a sufficient refrigeration spaces available, taking into account their business needs and all the information available to them. This mandatory requirement could then be accompanied by some helpful guidance, suggesting that a ratio of 1:50 (or whatever ratio is deemed appropriate) is likely to be adequate for the majority of businesses.

Is it appropriate to require that each deceased must be stored individually in separate compartments within the unit (as proposed in the draft Code of Practice for Funeral Directors in Scotland)?

We have expressed concerns to the Scottish Government that requiring funeral directors to store each deceased person "individually in separate compartments" within their refrigerated units could have a disproportionately negative impact on some businesses. In our experience, it is not uncommon for funeral director businesses to store deceased people on wheeled biers within large cold rooms. In many cases, this allows firms to make best use of the refrigerated space available.

Provided deceased people are in closed coffins and lying separately (never stacked), the NAFD has always taken the view that this does not offend the dignity of the deceased people in question. If businesses were required to install separate compartments within their existing units, they would not only incur significant expense but it may also lead to a reduction in their refrigerated capacity.

Should training and/or education be mandatory? Please explain your answer. In the event that training and/or education was made mandatory, please comment on:

Which members of staff require formal education and to what level (i.e. A Levels (or equivalent) or a degree or professional qualification) and to what extent can formal education be substituted by experience or other forms of training?

The NAFD offers two diplomas, in funeral directing and funeral arranging, as well as an introductory course, which is completed online.

The NAFD is working on improving and increasing our portfolio of training and qualifications. We believe that anyone working in the funeral profession, regardless of their position, should have access to training and qualifications, and as such we are developing our own strategic plans to make our training and education more inclusive to all funeral personnel.

The NAFD believes that by offering a holistic approach to education and training in the profession through formal education in the form of accredited qualifications and on-going training and CPD modules, we are able to reach out to all individuals.

Is it necessary to create a nationally accredited professional education programme or allow funeral directors to choose from the currently available qualifications?

The NAFD is seeking formal accreditation of its own qualifications later this year. Accredited training and qualifications demonstrate that we are aiming to provide a level of quality and consistent delivery to our members.

Should there be a number of specified hours of training, and any other form of CPD, that staff should be required to complete each year, or should staff or their employers self-assess their professional development needs?

The NAFD believes that CPD is an important part of educating the profession, and as such will be planning and developing a CPD framework once our portfolio of training and qualifications have been re-launched. We recommend the following hours of CPD for each of the distinctive occupational groups within the profession:

- Funeral directors – 20 – 30 hours per year
- Funeral arrangers/administrators – 10 – 20 hours
- Funeral operatives/assistants/drivers/bearers – 1 – 10 hours per year

Are there any other requirements that should be imposed on staff, owners and controllers of funeral directors to ensure their technical and professional competence (e.g. age, conduct or experience restrictions)?

Within the NAFD's criteria for membership there is a requirement for all businesses to have either a member of staff that holds the Diploma in Funeral Directing, or for the business owner to undertake a written test to establish their competency. The NAFD would like to see similar requirements, as a minimum, levied on all funeral firms going forward.

Is there a need to establish an independent ADR scheme and/or complaints adjudicator in addition to the funeral directors' own complaint handling and customer redress?

Since 9 July 2015, there has been a legal requirement for all traders, including funeral directors, to point consumers to a certified provider of ADR services.⁴ NAFD members discharge this obligation through our complaint resolution scheme, NAFD Resolve (previously the Funeral Arbitration Scheme), which is

⁴ The relevant legislation can be found here: <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

operated by the Centre for Effective Dispute Resolution (CEDR). As you are aware, this service is free of charge to consumers.

We are concerned that the vast majority of funeral firms who are not currently in trade association membership may not be complying with this requirement. We have therefore decided to open our dispute resolution service to funeral firms that are not in NAFD membership.

The NAFD has discussed our plans with CEDR and are in the process of applying for approval to become a consumer ADR body. We do not intend to run this ADR scheme for a profit and hope to be in a position to offer it to non-member firms by the end of this year.

Who is best placed to monitor and enforce compliance with quality regulation? Is a single UK-wide body or a different body in each part of the UK more appropriate, and how should either arrangement take account of the emerging regulatory regime in Scotland?

The NAFD would prefer there to be regulatory alignment across the United Kingdom and we think this can best be achieved by a single UK-wide regulatory body, such as the arms-length body we are establishing, which we hope will one day be granted statutory powers.

A lack of alignment across the UK is likely to lead to additional compliance costs for businesses that operate across devolved nation borders. In addition to this, we note that the powers devolved to the Scottish Government will not allow it to grant the Inspector of Funeral Directors the powers necessary to address all of the concerns raised by the CMA (e.g. matters relating to consumer welfare).

We are however very supportive of the good work that has been carried out in recent years by the Inspector of Funeral Directors at the request of the Scottish Government. We hope that any future regulator will seek to build on this work.

What role, if any, should the existing trade associations (i.e. NAFD and SAIF) and other relevant organisations, such as the Good Funeral Guide, play in relation to the quality regulatory regime? Please explain your answer.

The CMA has indicated that it does think that the NAFD or SAIF are well placed to monitor and enforce compliance. The reasons it gives for this are that:

- a) membership of the NAFD is voluntary;
- b) membership of the NAFD is not open to the entire sector; and
- c) balancing our representative function with a regulatory one could lead to a conflict of interests.

The creation of the new and independently governed regulatory body that is open to all funeral directing firms will overcome two of these objections.

If the Government legislated to make membership of the arms-length body a mandatory requirement, this would satisfy all three.

Should a licensing and inspection regime (see paragraphs 52 to 73) apply to individuals or businesses or both, and why? If both, what should be the respective obligations of individuals and businesses?

In order for compulsory regulation to be effective, the regulator would need to identify every business that provides funeral services to the public. Without this knowledge, we cannot see how the regulator could carry out risk assessments against all businesses that fall within its remit.

We broadly support the recommendation of the Scottish Inspector of Funeral Directors, that a progressive system of business level licensing should be implemented. This would see funeral businesses required to register certain minimum information (e.g. notification of business trading and all

operational locations) with the regulator, ensuring it is aware of all businesses operating within its regulatory remit.

Our initial thoughts are that, given the lack of evidence of widespread poor practice, imposing licensing requirements on individuals would bring limited additional value and is therefore likely to be disproportionately expensive, given the relatively small number of people working in the sector that the costs would be shared between. However, we would need more information about the likely additional cost to make a fully informed assessment.

What considerations should be taken into account when designing any quality regulatory regime to enable providers of all sizes to comply with that regime, and without deterring innovation, entry and expansion?

As set out above, we firmly believe that an outcomes-focused approach to regulation is preferable to a rules-based approach. This will help preserve diversity and encourage innovation in the market.

Given that the evidence points to standards being generally high, we also feel it is important that any quality regulation regime is underpinned by a risk-based approach. The cost of regulation will almost certainly be borne by the sector and could be passed on to consumers in the form of increased prices. We therefore feel that regulation should be implemented in such a way that allows for resources to be targeted at businesses that represent the greatest risk to consumers (e.g. physically inspecting high-risk businesses more frequently).

We hope that any future regulator will be open to exploring other, lower cost methods of monitoring regulatory compliance, such as requiring businesses to self-assess and report to the regulator on a regular basis.

What would be the likely costs of quality regulation to funeral directors? This includes the costs of implementing any changes necessary to comply with the regulation and the costs of demonstrating ongoing compliance with the regime.

With respect to the cost of compliance, this question is impossible to answer without knowing what standards will be required of funeral directing businesses. For example, a requirement for firms to have access to 1 refrigeration space per 50 funerals conducted per annum may well reflect current practice for many funeral directors but for some firms compliance is likely to lead to extra costs (in some cases without real benefits).

With respect to the costs of regulation itself, the vast majority of UK funerals are carried out by NAFD member firms. Provided a new statutory body is not set up alongside the arm's-length body that we intend to establish in the coming months, there will be no additional cost to these firms. If SAIF chooses to partner with us on this project, there will be no additional cost to the vast majority of funeral directing firms across the UK.

It will be necessary to charge a fee to those firms who are not already members of the NAFD or SAIF. We have not yet calculated what this will be but it will be proportionate and based on a fair assessment of the cost of regulating them.

What would be the likely costs of implementing and running the regime and how should this be funded?

The NAFD has shared a paper with the CMA that sets out our cost projections for setting up and running the arms-length regulatory body.

Are there any elements of quality that require immediate attention prior to the establishment of a quality regulatory regime?

It is clear that transparency of information, particularly in relation to the price of funeral service options, needs improvement. The NAFD intends to improve this situation by adopting the FSCSR Code of Practice, including all provisions relating to online price transparency, in May 2020.

Do you think we should tailor any aspects of quality regulation to reflect any differences in funeral service provision (and the current statutory regimes) across England, Wales, Northern Ireland and Scotland?

The United Kingdom is culturally diverse and a regulator should be prepared to take the needs of different religious faiths and cultures between and within its constituent countries into account.

What information on the quality of services provided by funeral directors should be collected and disseminated to customers to enable them to assess and compare funeral directors?

We think consumers would benefit from being able to see how a business (or branch) performed at its last assessment in relation to:

- back-of-house standards
- front-of-house standards (including sales practices); and
- transparency of information (including pricing information)

This information could be broken down into sub-categories and presented in a similar way to the approach adopted by the Care Quality Commission website – ranging from ‘inadequate’ to ‘outstanding’.

5. NAFD comments on questions regarding Information Transparency Remedies

Remedy 1 – Price transparency and comparability

How can we best facilitate shopping around and increase customer awareness of total funeral costs and local price differentials?

The NAFD broadly supports the proposals set out the Funeral Service Consumer Standards Review (“FSCSR”) consultation paper on improvement transparency in the funerals market.⁵

The FSCSR has identified 7 pieces of key information that would be useful to consumers when seeking to narrow their search for a funeral director that can meet their requirements for an appropriate price. The FSCSR has specifically proposed that funeral directors should make this information available to consumers, in a standardised format (a “Key Information Form”), both in a prominent place in their business premises and in a prominent place on their business website, or other online presence.

Assuming that a significant number of businesses do this, we agree that this will improve the market for the benefit of consumers by enabling them to:

1. make quick and easy comparisons of key information about funeral service providers;
2. make early informed assessments about a service provider’s price-range and market position compared with their competitors; and
3. in the case of particularly price-sensitive consumers, quickly ascertain whether they can afford the services of a particular business without risking the embarrassment of discovering this in a face-to-face encounter with a funeral director.

As set out above, the NAFD will, in the near future, transfer its regulatory functions to an arms-length regulatory body that will be open to all funeral directors, regardless of whether they are members of

⁵ The consultation paper can be accessed here: <http://www.fcsr.co.uk/wp-content/uploads/2020/02/FSCSR-Consultation-paper-2-transparency-for-website.pdf>

the NAFD or indeed any trade association. Our intention is also to transfer our current online membership directory, Funeral Directory, to this arms-length body.

We do not wish to unduly bind the hands of the new body's board with our public comments but it is currently envisaged that Funeral Directory will become a platform for making information about quality standards and basic pricing information available to consumers. We think that the Key Information Form that has been proposed by the FSCSR will be a useful format in which to do this.

In addition, the FSCSR has developed a more comprehensive questionnaire (for funeral directors to complete) that is designed to draw out all the information that a consumer is likely to need when making a final decision about which service provider to use.

At the time of writing, the FSCSR is seeking views on whether all funeral directing businesses should complete this questionnaire and to make this information publicly available.

If the CMA were to lend its support to this proposal, we think that this could improve consumer outcomes by:

1. providing consumers with comparable detailed information on which to decide which service provider is right for them;
2. generally raising awareness of the services offered by funeral directors by making this information available;
3. highlighting important considerations to consumers who may not otherwise have been aware of them (e.g. different care options for deceased people); and
4. providing third-party information aggregators (such as comparison websites) with a large body of useful information that could be presented to consumers in creative and more user-friendly format.

If the CMA were to indicate its support for all of these recommendations, including our proposal to adapt Funeral Directory in order to present information to consumers, this will enable consumers to quickly identify a number of suitable funeral directors that can meet their requirements at a price within their budget, before looking in greater detail at the offerings of each to make a final decision.

How can we enable better comparison of funeral directors' prices and quality of services?

Please see our answer to the previous question.

How can we better prepare the customer for the arrangement meeting and make them aware of all the options offered by the funeral director, including low-cost options?

The NAFD believes that all funeral directors should be required to complete a standardised questionnaire, along the lines of the FSCSR Funeral Director Questionnaire, and make this information publicly available (e.g. online).

The NAFD also believes that encouraging a greater awareness of funerals and the need to plan and make provision for them, ahead of need, would lead to consumers making more informed purchase decisions. As outlined in earlier submissions, extensive campaigning by Dying Matters, the NAFD and others has only had a modest impact on the general reluctance to engage with the topic by most consumers and so we believe the CMA may have a valuable role to play, perhaps in association with the Government's Behavioural Insights team?

How can we give customers a clearer idea of the final cost (early on in the process of choosing a funeral director and before the arrangement meeting)?

Funeral directors should place key information, including information about the price of services offered, on an easily accessible online platform, such as Funeral Directory or their own company website.

How can we make the platform most useful for customers how can we ensure that it is used by as many customers as possible?

We are concerned that setting up a new information platform will be disproportionately expensive, particularly in view of the fact that there are multiple industry-operated platforms already in existence.

If the CMA were to indicate its support for the platform that we intend to be operated by the new arms-length body, this would help generate public interest, which would ensure a greater number of consumers engage with it.

Should funeral directors and crematoria operators be required to adopt a standardised methodology for presenting pricing and service data as an alternative to the platform?

We support the standardised approach being provisionally proposed by the FSCSR.

Should crematoria availability be incorporated into the platform?

We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

What will be the likely costs of this remedy?

Setting up a suitable information platform, populating a database from scratch and operating/maintaining the platform so as to ensure information and pricing remains up to date, in such a fragmented sector, is likely to be very expensive.

The NAFD can adapt the Funeral Directory to allow for the presentation of information in the format proposed by the FSCSR, make it available to all funeral firms and transfer ownership and responsibility for it to an arms-length body for very little cost.

Will this remedy give rise to any potential unintended consequences?

If the CMA were to require funeral directing firms to present their full list of prices and service offerings in a rigid and standardised format, this could lead to standardisation of service offerings and a consequent reduction in consumer choice.

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

Are there intermediaries other than the CQC who provide, or are well placed to provide, information on funeral planning to those close to death or to the bereaved?

Other than GPs, solicitors offering Will writing services and others in the community who may come into contact with target consumers, we are not aware of any other suitable intermediaries. We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

More generally, it is worth considering supporting the work of Dying Matters, the NAFD and others in campaigning to raise awareness of thinking ahead about funeral arrangements through established opportunities like Dying Matters week, as there are well-established existing structures and events, happening at a local level, which reach consumers in their own communities as well as more generally via social media and press coverage.

Are other ways in which funeral directors and crematoria operators can raise awareness of the platform other than providing information on their websites and promotional material and discussing the platform at the arrangement meeting?

We cannot think of any other ways in which funeral directors or crematoria operators could raise awareness of an information platform. We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

Are there alternatives to raising awareness of the platform to general advertising and the use of intermediaries?

Since 2013, the NAFD (and a number of other organisations, including Dying Matters) have campaigned in numerous ways to encourage people to think about their funeral wishes and arrangements in advance.

In our view, working through intermediaries is the right approach for the government to take and will add strength to the work already underway - a separate Government-funded campaign is likely to be both costly and unproductive.

What are the likely costs of this remedy?

To achieve national reach and to target those consumers with a higher propensity to act, the costs of any major awareness-raising campaign are likely to be considerable.

Will this remedy give rise to any potential unintended consequences?

This is an important question that requires careful consideration. We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

Remedy 3 – Funeral planning awareness before the point of need

Are there particular circumstances prior to the point of need at which consumers are likely to be receptive to the idea of preparing for their funeral or that of a loved one?

In our first survey of consumers (commissioned through YouGov in 2016) we asked the question “What, if anything, would prompt you to think about your funeral?” of a representative sample of GB adults.

48% responded that the death of someone close to them would prompt them to think about their own funeral – suggesting there may be an opportunity, although one that would require extremely careful handling – with those people who have recently attended a funeral. Experiencing serious illness (44%) and reaching a particular age (42%) were also cited as potential prompts.

Interestingly, the more children a respondent had, the less likely they were to be thinking about their own funeral. Whilst 14% of people surveyed who had no children in their household were putting off the planning, one in 5 (20%) of those with three children or more said they did not think anything would make them contemplate their funeral.

However, if people with children were arranging their Will, or setting out planned arrangements for care of the children in the event of their death, might it be possible to introduce the concept of funeral planning during these processes? Certainly 33% of those GB adults surveyed for us by YouGov in 2016 confirmed that arranging their Will would be a prompt to consider their funeral.

What interventions (if any) are likely to encourage funeral planning and how might they be delivered?

Funeral planning can take a number of forms – from informal conversations to the taking out of a funeral plan. The NAFD has focused considerable efforts on the former, since 2013, in partnership with Dying Matters - through a conversation guide called ‘My Funeral Wishes’. A plurality of studies, reports and

other evidence has outlined the importance of being able to have a conversation about funerals, even if the planning never goes any further.

It is the NAFD's contention that if it was possible to encourage a more confident and comfortable society, in terms of discussing or contemplating the end of life and funerals, this would directly lead to more informed consumers, who would be more likely to do research, shop around, ask questions, check standards and generally make the kind of informed decisions expected during other consumer purchases.

The campaigning by Dying Matters, Cruse Bereavement Care, Age UK, the NAFD and others has only had a modest impact on this challenge and so we believe the CMA may have a valuable role to play in supporting this work, perhaps in association with the Government's Behavioural Insights team?

Should this remedy target particular types of consumers?

As noted above, there are clearly some life events or stages that are more likely to trigger contemplation of one's funeral than others. Dependent upon resources, it may be sensible to focus on these groups of consumers in the first instance.

However, we also believe there is a role to play for the National Curriculum here. As discussed in several previous submissions, making a significant shift in society's willingness to discuss death and bereavement should arguably start in schools (as well as in families), before the opportunity to explore the topic as a natural part of many academic subjects, as well as in PHSE - and when children are more likely to be open-minded and curious - is lost.

Given that a child loses a parent through death every 22 minutes; 1 in 29 young people are bereaved of a parent, brother or sister; and 78% of 11-16-year-olds experience at least one of their close relatives or friends dying⁶, there is also an additional and important practical benefit to this measure too. Evidence from Winston's Wish and others shows that the impact of unresolved grief in childhood can significantly impact on the quality of adult life.

What are the likely costs of the remedy?

Any general information campaign is likely to have considerable costs and we would urge the CMA to work with organisations already active in this area, rather than create new arrangements from scratch.

Will this remedy give rise to any potential unintended consequences?

We cannot think of any particular unintended consequences likely to be caused by encouraging people to be more comfortable talking about the end of life and planning for their funerals or those of someone close to them.

Remedy 4 – Mandatory reflection period

Is a 'reflection period' an effective mechanism for encouraging customers to ensure that they choose a funeral director that best meets their needs?

There is undoubtedly a proportion of consumers that engage a funeral director, only to later realise that the particular business does not meet their needs. A smaller subset of these consumers will be sufficiently motivated by this realisation to seek to change service provider. A smaller subset of these dissatisfied consumers may decide against changing providers due to the financial impact of doing so. A reflection period will be an effective mechanism for helping to ensure that these consumers choose a funeral director that best meets their needs.

⁶ <https://www.winstonswish.org/adults-bereaved-as-children/>

In order to assess the effectiveness of the proposed remedy overall, it will be necessary to understand how many consumers are likely to fall within this subset. Our initial view is that this number is likely to be very small. This is supported by the CMA's own consumer research, which indicates that the majority of consumers tend to be satisfied with the service they receive.

In view of this, we are doubtful that this will be an effective remedy.

If so, when should this "reflection period take place?

- i. **After getting information on funeral options from a funeral director on its premises and before signing the contract?**
- ii. **after signing the contract in an arrangement meeting but having cancellation rights for a certain period of time afterwards? Or**
- iii. **another suitable time?**

We think consumers are most likely to fall within the category described above if they are rushed into making a choice of funeral provider. We therefore think that the most appropriate time for a reflection period to take place is immediately after instructing a firm to collect a deceased person out of hours or from a hospital or care home.

What are the likely costs of this remedy?

We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

Will this remedy give rise to any potential unintended consequences?

We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

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

Will the imposition of a cap on the collection, transportation and storage of the deceased encourage more customers to switch funeral directors after having reflected on their original choice of funeral director?

We would need to consult with members in order to usefully answer this question. This was not possible in the very short time available. Had we been given more time to respond to this consultation we would have surveyed our members to seek to understand what, if anything, they currently charge for the collection, transportation and storage of the deceased, in the event that the client chooses to switch provider, and how frequently this situation occurs.

How should the cap be calculated?

- i. **Should the charge for collection and transport reflect the distance covered by the funeral director or represent an average cost?**
- ii. **Should there a daily charge for the storage of the deceased or an average charge for storage, which reflects the average length of time that the deceased is typically stored?**

Again, we would need to consult with members in order to usefully answer this question. This was not possible in the very short time available.

Are there other approaches to setting a potential cap on charges levied by funeral directors for the collection, transportation and storage of the deceased (other than cost-based approaches) that the CMA should consider?

The NAFD has concerns about the unintended consequences of introducing a cap.

An alternative approach would be to ensure better awareness of and easier access to information about services and charges, earlier in the process. However, this has its challenges as funeral directors are frequently only first contacted by a family immediately after the death of a loved one asking for them to be collected. In this circumstance, to prompt a discussion about collection, transportation and storage charges would display a lack of compassion. Rightly or wrongly (and we would argue, rightly) we know many funeral directors feel very strongly that their first responsibility is to care for the client and the person that has died, and to talk about costs later.

What are the likely costs of this remedy?

This question falls outside of the NAFD's field of expertise.

Could this remedy give rise to any unintended consequences?

Although we have not had time to fully engage with our members, we are aware of several unintended consequences of this remedy:

- if the cap is set too low it could lead to lower quality services, with firms using cheaper vehicles or untrained staff to undertake the collection to save money;
- a low cap may also discourage funeral directors from providing an out-of-hours collection service, deciding instead to rely on other firms to carry this out. This could lead to consumers paying for the deceased person to be collected on more than one occasion;
- those businesses who currently charge nothing to clients who choose to switch early on in the process, may introduce a charge;
- those businesses who charge less than the cap may increase their prices to meet the cap; and
- it may establish a standard rate for collection, transportation and storage services, leading to some consumers, who choose to switch, paying two sets of collection fees where they would not have previously.

Remedy 6 – Managing conflicts of interest

Are there any other ways to eliminate conflicts of interest that may adversely impact the quality of service provided by funeral director to customers?

The NAFD has no comments to make in respect of this proposed remedy.

Will this remedy give rise to any potential unintended consequences?

The NAFD has no comments to make in respect of this proposed remedy

Remedy 7 – Disclosure of business ownership and commercial relationships

Section 1 of the NAFD Code of Practice requires members to “disclose the ultimate ownership of their funeral business on their premises (including branch offices) in a visible position to the public, and on letterheads and publicity material.”

The NAFD has no further comments to make in respect of the questions about this proposed remedy.