

Funerals Market Investigation

Westerleigh Group's response to the CMA's entry analysis

1. Introduction and summary

1. The CMA has undertaken an analysis of the impact of entry on volumes, prices and slot length. A summary of the results was provided in the Competition between Crematoria WP to which Westerleigh has already responded.¹ The CMA shared the data and script for the analysis provided in the Appendix to the Competition WP separately on 24 February 2020. This response to the entry analysis should therefore be read in conjunction with Westerleigh's main response. The data and coding script shared by the CMA excluded its analysis of slot length on the basis it did not provide any meaningful conclusions. Westerleigh assumes therefore that this analysis will not form any part of the CMA's Provisional Findings and has focused its response on the impact on volumes and prices (and capital expenditure) only.
2. Despite its limitations, the CMA's analysis is supportive of Westerleigh's submissions on a number of important issues. It is therefore disappointing that the results of this analysis have not fed into the CMA's assessment and that the CMA has instead attempted to dismiss or downplay this evidence. The CMA should not selectively present only the analysis that it believes supports what appears to be pre-determined conclusion that there are competition concerns and that remedies are required, while downplaying or otherwise ignoring evidence to the contrary. In particular:
 - (a) The impact of entry on volume shows that significant competition takes place between crematoria, and that this occurs at distances much further than the CMA has assessed. Specifically, there is an estimated 10% average reduction in local authority ("LA") crematoria volumes from entry 20-30 minutes normal drive-time away and an estimated 3% reduction on average from entry 30-40 minutes away (but in some cases significantly greater volume reductions at distances further than 30 minutes away). Despite this, the CMA assesses local competition only within narrow 18 minute normal drive-time catchment areas. The CMA's own evidence of the impact of entry therefore directly contradicts its unduly narrow approach to assessing catchment areas and the strength of constraints outside those catchments.
 - (b) The CMA attempts to dismiss or downplay the impact of entry on volumes by suggesting, on the basis of limited and anecdotal evidence, that the volumes lost are predominantly customers located close to the entrant and that the lack of an ongoing decline in the incumbent's volumes suggests no competition is taking place. This interpretation is misguided, shows a poor understanding of how competition in the market works, and misrepresents evidence that is counter to Westerleigh's own experience of particular entry events:

¹ Defined terms used in this response have the same meaning as in Westerleigh's main response to the working papers dated 2 March 2020.

- (i) First, the fact that a large proportion of lost customers may be those located close to the new crematorium is not directly relevant to whether competition takes place between them. The fact there are inframarginal customers that may have a preference for the closest crematorium is not in dispute; this does not preclude competition taking place for marginal customers. Marginal customers need not represent the majority (or even close to the majority) of customers for them to drive competition. Indeed, the CMA notes that four of the LAs pointed to "*losing some volume from funeral directors/customers located close to, or in between, their crematorium and the new entrant*"² but fails to that this actually evidences competition taking place. Evidence provided by Westerleigh previously and in this response points to crematoria responding to competitive pressure.
- (ii) Second, a number of the specific examples cited by the CMA following its nine telephone calls with LAs are counter to Westerleigh's own experience of entry in these areas. Westerleigh therefore provides further details and evidence in this response for each of these areas where Westerleigh is active ([X]), which points to significant competition taking place between the entrant(s) and incumbent(s).
- (iii) The CMA believes there is limited ongoing competition beyond the point of entry because volume reductions do not continue in subsequent years. This misunderstands how competition works, in particular assuming (without evidence) that competitive conditions following entry – including relative quality differentials – remain entirely static, and applies a threshold to crematoria that does not apply to other sectors (discussed below). Evidence provided by Westerleigh previously and in this response points to ongoing competition between entrants and incumbents long after entry has occurred.
- (c) Despite the CMA's assertion to the contrary, its analysis shows a significantly greater reduction on volumes when a private sector crematorium enters against an LA crematorium compared to when entering against another private sector crematorium. This is entirely consistent with Westerleigh's submissions on quality: the quality differential between an incumbent LA crematorium and private sector entrant will be significantly greater on average (and subject to greater volume reductions) than between private sector incumbent and entrant, and customers are willing to travel further to take advantage of this higher quality of service. This contradicts the CMA's misguided assertion that "*crematoria services are a relatively homogenous 'product'*".³
- (d) No weight should be attached to the CMA's results on the impact of entry on price. The counterintuitive results for private sector crematoria indicate that the model is

² Competition between Crematoria WP, paragraph 95(e).

³ Pricing Regulation WP, paragraph 3.

mis-specified (omitted variables, reverse causality). More importantly, for LA crematoria the CMA's approach of testing for a pricing response to entry ignores the fact that public sector operators may not be responsive to commercial incentives or objectives in the same way as private operators (with LAs having wider objective functions). This should be a starting premise of the CMA, not its end conclusion.

2. Evidence of a significant impact from entry on volumes indicating strong competition over a wide distance

3. The CMA's results show a significant impact from entry on volumes. The results also show that entry has a significant impact at distances further than the CMA takes into account in its local competitive assessment. In particular, as shown in Figure 1 below, while the CMA considers competitors only within an 18 minute normal drive-time (30 minute cortege drive-time), the analysis indicates that there is a significant effect between 20 to 30 minutes normal drive-time, as well as (to a lesser extent) between 30 and 40 minutes normal drive-time.
4. In addition to the representations made in Westerleigh's main response, this provides a further, clear, indicator that the CMA has adopted an overly narrow approach to assessing local competition which is biased towards a finding that crematoria face weak competitive constraints. This approach cannot be maintained as the basis for the CMA's Provisional Findings.

Figure 1 – Impact of entry at different drive-times

Drive-time band	Impact of entry	
	On all sites	On LA sites
0-10 mins	-30%	-29%
10-20 mins	-20%	-17%
20-30 mins	-7%	-10%
30-40 mins	n.s.	-3%
40+ mins	n.s.	-2%

5. Furthermore, while the average effect of entry between 30 to 40 minutes is to reduce volumes by only 3%, this average disguises a number of instances where the effect can be significantly greater, dependent on local factors. For example:
- (a) The LA crematorium in Barrow-in-Furness experienced entry from a private sector operator located 46 minutes normal drive-time away in 2017, leading to a volume reduction of 26% over two years at Barrow.
- (b) The LA crematorium in Bath experienced entry from a private sector operator located in Mendip, 37 minutes normal drive time away in 2011, leading a to a volume loss of 13% at Bath in the year of entry.

6. Indeed, irrespective of the distance, the CMA's results show a consistent, significant, impact of Westerleigh's entry on the volumes of the main incumbent crematoria. This includes, for example:

[✂]

7. Westerleigh also believes the CMA is likely to have underestimated the volume effects for a number of reasons:

(a) First, the CMA does not take into account the extent to which an existing crematorium is capacity "constrained". When Westerleigh enters against such a capacity constrained crematorium, the loss in volumes at that site is likely to be less than would otherwise be the case as they are able to retain the same or a similar level of cremations but offer a shorter waiting time for customers. The volume of cremations may not change leading the CMA analysis to underestimate the effect on volumes. Note that so-called capacity "constraints" do not prevent strong competition from taking place between the entrant with spare capacity and the incumbent as they still compete over different quality attributes and the entrant will seek to use its shorter waiting time to attract customers that have a preference not to wait longer. In turn, the incumbent site, by having more available slots during the core times of the day, will be able to offer shorter waiting times and so will be more competitive against other competitor sites and attract market share. The incumbent still competes while constrained, it simply offers a longer wait time. It is not uncommon for LA sites to have significant waiting times particularly at busy times of the year.

(b) Second, the CMA recognises some of the limitations of a PCA analysis. Given the number of competitors is an endogenous variable, the regression assumes an underlying causal relation between the number of crematoria within a certain distance and the volumes at the incumbent crematorium, while entry decisions may reflect locations where volumes are high. Typically, where the explanatory variables are correlated with the error term this correlation causes the estimate of the coefficient of the explanatory variable to be biased towards zero thereby underestimating volumes.

8. [✂]. Seeking to identify specific investments in facilities, service or other quality attributes directly in response to entry or immediate lost volumes is unlikely to show any systematic relationships, but this does not mean the incentives to invest and improve are not driven by those lost volumes, at least for private sector crematoria. [✂].

Table 1 – [✂]

3. The CMA's attempt to dismiss or downplay the impact of entry on volumes is unreasonable and not supported by the evidence

9. Despite acknowledging that the quantitative data shows "*that entry has a statistically significant impact on volumes*" at nearby incumbent crematoria⁴, the CMA proceeds to attempt to downplay the relevance of this evidence on the basis that (a) the most significant loss of volumes for incumbent crematoria are from customers located closer to the new crematorium; and (b) that volumes at the incumbent crematoria stop declining after an initial period of diversion. As explained below, neither line of argument put forward by the CMA allows it to ignore the unavoidable conclusion that its entry analysis provides clear evidence of competition between crematoria, including at distances much further than the CMA has assessed as part of its analysis of local concentration.

3.1 The CMA misleadingly presents qualitative evidence to downplay the significant volume losses

10. The CMA conducted nine telephone calls with LAs, most of which had lost volumes since entry (it is unclear which of the LAs spoken to did not lose volumes).⁵ The CMA concludes from the vague and anecdotal evidence obtained from these phone calls that when a new crematorium opens, the most significant loss of customers experienced by the incumbent is from those customers located close to the new crematorium. Westerleigh has significant concerns with the CMA's interpretation of this evidence.

11. First, the fact that a large proportion of lost customers may be those located close to the new crematorium is to be expected. The fact there are inframarginal customers that may have a preference for the closest crematorium is not in dispute. This does not preclude competition taking place for marginal customers. To presuppose, as the CMA appears to, that marginal customers need to be the majority of customers for there to be competition between crematoria is misguided. Moreover, the CMA notes that four of the LAs pointed to "*losing some volume from customers located close to, **or in between**, their crematorium and the new entrant*" without recognition that this actually *supports* competition taking place.⁶ Westerleigh points the CMA to its main response on this point, including its analysis of overlapping catchment areas and competition over population centres, noted by the CMA but ignored in its assessment.

12. Second, a number of the LAs noted by the CMA are located in areas where Westerleigh has entered, and their accounts directly contradict Westerleigh's experience of competition in

⁴ Competition between Crematoria WP, paragraph 90.

⁵ No summaries of these phone calls have been published by the CMA. Westerleigh requests that the CMA do so in order to provide an appropriate level of transparency to parties affected by its investigation. Notably, the CMA notes later that it asked a further 12 local authorities about the impact of entry on their fee setting. It is unclear whether the CMA also asked those local authorities about the impact of entry on volumes, and, if so, why that evidence is not presented in the working papers.

⁶ Competition between Crematoria WP, paragraph 95(e).

those markets: Kettering and Leicester (Great Glen), Cheshire East (Vale Royal) and Taunton (Sedgemoor). To assist the CMA, similar to its main response, Westerleigh has provided additional evidence below to support its submissions, including [REDACTED].

Kettering (Great Glen)

13. The CMA notes that Kettering Crematorium lost volumes from near Great Glen when it opened, noting the volume losses from "*these funeral directors*" before and after Great Glen opened.⁷ The CMA has not provided details of the funeral directors referred to so Westerleigh is unable to respond to these points directly. However, the CMA cannot use the fact that many of Great Glen's customers are located close to the Great Glen site to dismiss or underplay the competition it faces.

14. [REDACTED]

Figure 2: [REDACTED]

As shown in Figure 3 below, Kettering Crematorium has continued to lose volumes since the opening of Great Glen in 2017 and numbers are 21% down between 2016 and 2018 despite the significant increase in death rate and cremation rate over the period (captured by the year fixed effects in the CMA's specification but shown separately below). Countesthorpe also shows a decline over this period. [REDACTED].

Figure 3 – cremations at Kettering Crematorium since Great Glen opening

	2016	2017	2018	2016-2018 Δ
Kettering Crematorium Cremations	2,427	2,017	1,911	-21%
Adjusted for national death rate	2,427	1,984	1,853	-24%
Deaths*	597,206	607,172	616,053	-

Source: Cremation Society

15. In its assessment, the CMA has failed to consider who served the customers in Market Harborough prior to the opening of Great Glen and Countesthorpe, or why Kettering Crematorium is not still serving these customers, given it is the closest crematorium.

Leicester (Great Glen)

16. The CMA notes that after entry by Great Glen and Countesthorpe, Leicester City (Gilroes) has "*served significantly fewer customers from the south of the city and experienced a loss of customers from within the city but located close to the new crematoria in the south and east edges of the city*".⁸ The CMA therefore appears to suggest that competition does not take place between Gilroes, Great Glen and Countesthorpe. However, on the contrary, this actually

⁷ Competition between Crematoria WP, paragraph 95(a).

⁸ Competition between Crematoria WP, paragraph 95(b).

demonstrates that competition is taking place. Westerleigh submitted a detailed analysis of the competition between Great Glen, Gilroes and Countesthorpe crematoria in its main response:

- (a) First, each crematoria is in strong competition for customers located in Leicester and the catchment areas of all three crematoria have significant overlaps covering Leicester. The CMA cannot simply conclude that, because Leicester City may have a competitive advantage due to its location for customers in the north of the city and Great Glen and Countesthorpe for those in the far south of the city, competition does not take place between all three crematoria over a significant population centre.

Figure 4: [✂]

- (b) [✂].
- (c) Third, as shown in Figure 5, Leicester City continues to lose market share to Great Glen, with cremations down by 16% since the opening of Great Glen. Adjustments for the death rate (taken into account by the CMA using time fixed effects) are shown separately below.

Figure 5 – Cremations at Leicester City Crematorium since Great Glen opening

	2016	2017	2018	2016-2018 Δ
Leicester City cremations	2,364	2,119	1,976	-16%
Adjusted for national death rate	2,364	2,084	1,916	-19%
Deaths*	597,206	607,172	616,053	-

Source: Cremation Society

17. The CMA also cannot consider the impact of Great Glen's entry on Gilroes in isolation. Great Glen is constrained by the combined and aggregate competition from Gilroes, Countesthorpe, Kettering, and its attempts to attract customers from further afield (see paragraph 71 of Westerleigh's main response).

Cheshire East: Crewe and Vale Royal

18. The CMA notes that Crewe crematorium lost volumes in the CW7, CW8, CW9, CW10 post-codes following entry by Vale Royal.⁹ While CW8 and CW9 are located closer to Vale Royal, CW7 (Winsford) and CW10 (Middlewich) are located directly between Vale Royal (the entrant) and Crewe crematoria. The CMA again fails to understand how competition works: while there may be customers with a preference to use the local crematorium in CW8 and CW9, this does not prevent strong competition for customers located in those towns directly between Vale Royal and Crewe, inside the overlapping catchments of both in CW7 and CW10. These customers have the choice between the two. [✂]

⁹ Competition between Crematoria WP, paragraph 95(d).

Figure 6: [REDACTED]

19. The CMA's own analysis shows a significant fall in both volumes and fees at Crewe crematorium following the entry of Vale Royal.¹⁰ [REDACTED].
20. The competition between Crewe and Vale Royal also cannot be considered in isolation. A new crematorium, Lach Dennis (The Birches) is scheduled to open in 2020 and is located only 10 minutes (normal) drive time from Vale Royal.¹¹

Taunton (Sedgemoor)

21. The CMA notes that Taunton Deane Crematorium, operated by Somerset West and Taunton Council, which Westerleigh competes with following the opening of its Sedgemoor site in 2013, stated that it lost "*some volume from funeral directors/customers located close to, or in between their crematorium and the new entrant*".¹² It is unclear how or why the CMA has interpreted this as limited competition taking place. On the contrary, it supports Westerleigh's submissions: it is unsurprising that Taunton lost volumes from customers located close to Sedgemoor, but this says nothing about competition between them. Indeed, the evidence cited by the CMA does not say that Taunton did not also lose customers located closer to Taunton than to Sedgemoor.
22. In fact, this competition is very strong, particularly for customers located between Taunton and Sedgemoor in Bridgwater (accounting for two-fifths of all Sedgemoor customers). [REDACTED].

Figure 7: [REDACTED]

3.2 The CMA nonsensically argues that volume losses at the incumbent must persist for multiple years for there to be ongoing competition with the new entrant

23. The CMA notes that for competition to be taking place it "*would expect incumbent crematoria to suffer from declining volumes year-on-year after entry*" and that because volumes do not continue to decline in subsequent years "*there is limited ongoing diversion of customers between the incumbent and the new crematorium*".¹³
24. This makes no economic or commercial sense and the CMA appears to be applying a different (and non-sensical) interpretation of the response to entry in this sector relative to that it would apply in other sectors. For example, if Tesco was to open a grocery store adjacent to a Lidl store, leading to an initial loss of Lidl volumes, the fact that the volumes of both increase in subsequent years (and Lidl does not see a reduction in volumes from year two onwards)

¹⁰ Volumes at Crewe fell by 16% in the two years following entry while fees were reduced by 11% in the year following entry.

¹¹ <https://www.northwichguardian.co.uk/news/18074384.plans-birches-lostock-gralam-approved-landscaping-requires-changes/>

¹² Competition between Crematoria WP, paragraph 95(e).

¹³ Competition between Crematoria WP, paragraph 98.

does not mean that the two stores are not competing and there is no ongoing diversion between the two, particularly in the context of rising overall demand for groceries (cremations).

25. The CMA states that this would have to be the case because new entrants have argued that they are higher quality and compete across a wide geographic area.¹⁴ It is unclear why this would lead to the requirement for persistent volume losses in order for the CMA to accept that there is ongoing competition between crematoria, nor has the CMA explained on what basis it adopts this position. Taking the previous example of Tesco entering against Lidl: such a conclusion applies regardless of whether Tesco is of higher quality than Lidl or whether they compete over a large area.
26. The CMA's argument also takes no account of any change in local competitive conditions following entry. It assumes demand is constant and that all other attributes remain static. The CMA again presupposes that competition on quality does not occur: it estimates significant reductions in volumes for an incumbent but assumes crematoria do not respond to those reductions in any way (because it cannot properly measure quality). There may be more limited responses to competition from LA crematoria (see below), but this is not Westerleigh's experience of its own activities.
27. [REDACTED].

4. The results indicate differentiated crematoria and competition on quality but is not taken into account by the CMA

28. The CMA accepts that if the evidence shows that entry has a more significant impact on volumes at incumbent LA crematoria, as compared to incumbent private crematoria, this would be a clear indicator of a "*significant quality differential between private and local authority crematoria...and [that] customers were willing to travel for a higher quality service*".¹⁵ However, the CMA concludes that this "*does not appear to be the case*", without further explanation.
29. In fact, the CMA's analysis shows that the effect of entry on volumes is far greater when a private sector crematorium enters against a LA crematorium compared to entering against another private sector crematorium. In particular, aggregating all entry events up to 30 minutes shows the impact of private-on-LA entry reduces volumes at the LA incumbent by 15%, whereas the impact of private-on-private entry reduces volumes at the private incumbent by only 4%.
30. This strongly supports Westerleigh's submissions that there is a significant differential quality between private and LA sites, which drives competition between crematoria. The greater the quality differential, the larger the impact on volumes, reflecting customers choosing, on

¹⁴ Competition between Crematoria WP, paragraph 98.

¹⁵ Competition between Crematoria WP, paragraph 92.

average, to use the higher quality facility to a greater extent and being prepared to travel further for a better quality service. The CMA cannot simply ignore and/or misrepresent the results of its own analysis because it contradicts its assertion, for the purposes of assessing remedies, that crematoria services are "*relatively homogenous*".¹⁶

31. Westerleigh also notes that the main omission of the PCA is the impact of concentration on quality. Westerleigh has argued from the outset that competition takes place primarily on quality, which comprises a wide range of different attributes important to customers. Given the multiple attributes underlying quality, the CMA's assessment of slot length in isolation would be unlikely to ever be meaningful. Similarly, the CMA has attempted to analyse capital expenditure and concludes that, despite the limitations of its analysis, it considers that investment decisions are likely to be taken relatively independently of local entry events. However, the CMA makes no attempt to distinguish between capital expenditure that is required to maintain ageing LA facilities or routine capital expenditure on cremators (which will be higher for older facilities given equipment life cycles) and capital expenditure that involves investments in quality, expansion or improved services. Without making such a distinction Westerleigh believes no weight can be attached to the results on capital expenditure.¹⁷
32. Westerleigh recognises that capturing quality quantitatively for such an analysis is difficult, particularly given the process of competition following entry, which involves building a reputation and awareness over time, including through feedback from funeral directors. However, this analysis should not and cannot be used as evidence to suggest that competition on quality does not take place. Instead Westerleigh has provided a considerably body of evidence which all points to significant competition on quality, including qualitative gain analysis and movements in market share, detailed feedback from consumers and funeral directors, and the views of local site managers that are being used to inform Westerleigh's commercial decisions.

5. Results on pricing show misspecification of the model and should be ignored

33. Westerleigh believes no weight should be attached to the results of the CMA's analysis of the impact of entry on an incumbent's cremation fees.¹⁸ In relation to the impact of entry of LA pricing, which shows no effect, the CMA continues to analyse a public sector market with a misguided expectation that public sector crematoria will be responsive to commercial incentives. The CMA noted itself at the Market Study stage that this was not the case: LAs are

¹⁶ Price Regulation WP, paragraph 3.

¹⁷ The CMA has also made no attempt to capture differential costs by undertaking a margin concentration analysis and potentially limiting costs to those that reflect differential quality. Westerleigh would be sceptical of such an approach given the majority of the sector continues to be supplied by the public sector, which may have higher costs due to not being subject to normal commercial incentives (and being inefficient) rather than the provision of higher quality.

¹⁸ Competition between Crematoria WP, paragraphs 99 to 104.

subject to more complex objectives functions.¹⁹ The likely absence of any effect of entry on LA pricing should therefore have been a starting premise for the CMA's analysis, not one of its conclusions.

34. In relation to the impact of entry on private sector pricing, Westerleigh makes a number of points:
- (a) First, Westerleigh acknowledges that prices are likely to be less responsive than other parameters. As Westerleigh has emphasised previously, competition primarily takes place on quality (over which marginal customers are highly sensitive).
 - (b) Second, Westerleigh has no visibility of the data to determine whether the price increases observed, on average, may reflect (for example) increased costs as incumbents respond to entry by increasing quality. Nor does the CMA appear to have considered this.
 - (c) Third, entry of a new competitor is a key factor in Westerleigh's price setting. Recent examples include Aylesbury Vale, which has a nearby competitor, Berton Crematorium, which recently opened. [redacted]. Further examples are provided both above and in Westerleigh's main response as excerpts from relevant Site Manager Reviews.
 - (d) Fourth, the counterintuitive results of the CMA's analysis that show an increase in prices following entry ought to have strongly suggested to the CMA that its analysis is mis-specified. The CMA recognises that the number of competitors is endogenous; the regression assumes an underlying causal relationship between concentration and price while price may also drive the entry decision.²⁰ The CMA's analysis also likely suffers from omitted variable bias (also recognised by the CMA).
 - (e) As an illustration of likely mis-specification from omitted variables, Westerleigh has run an alternate regression replacing the year-specific dummy variable (which control for trends in volume that are the same for all crematoria) with crematorium-specific trends (which capture trends in volume that differ between crematoria). The results show a negative effect of entry on fees for all time bands (0-10, 10-20, 20-30, 30-40 and 40+ minutes) with most statistically significant (but small).

¹⁹ Interim Report, paragraph 5.46: "[when setting fees] *local authorities have to balance a wider set of objectives (for example, their role in providing cremations as a public service, and councillors, who often make the final decision on fees, being aware of public sensitivities around fees and charges).*"

²⁰ Previous empirical studies using a similar fixed effects model estimating results both with and without correcting for endogeneity (using an instrumental variable), show that the impact of concentration on price can be underestimated by a factor of 1.5 (i.e. the corrected coefficient is 150% greater than the uncorrected coefficient). See *Endogeneity in the Concentration-Price Relationship: Causes, Consequences, and Cures*, W. Evans, L. Froeb and G. Werden, *Journal of Industrial Economics*, Vol. 41, No. 4, 1993, pp. 431-438.

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35. This suggests that the CMA's results on price should not carry any weight in its assessment of competition.