

## Funerals Market Investigation

### Westerleigh Group's response to the CMA's working paper on Local Authority tendering remedy proposal

#### 1. Introduction

- 1.1. This response sets out the Westerleigh Group's ("**Westerleigh**") comments on the CMA's working paper on possible options for the wider use of tendering by local authorities ("**LAs**") as a potential part of any remedies package (the "**Tendering Proposal WP**").<sup>1</sup>
- 1.2. The CMA's tendering proposal is primarily focused on funeral director services. However, a key element of any funeral service and package is the venue for the funeral (in respect of cremation, the choice of crematorium). The Tendering Proposal WP does not consider how the proposal for wider use of LA tendering would impact on the customer's choice of crematorium. However, Westerleigh is concerned that a remedy of this nature could adversely restrict customer choice and more generally restrict, rather than promote, competition in the crematoria sector.
- 1.3. In particular, there would be a significant risk that as a result of any LA scheme customers may be limited to, or otherwise unduly influenced towards, using the LA's own crematoria, or the crematoria of a (vertically integrated) funeral director which is successful in any tender, thereby distorting competition in the crematoria sector and undermining the progress that has been made in recent decades through much needed new investment by private sector crematoria operators in improving choice in crematoria services. This risk is evident from the current schemes detailed in the working paper, [~~redacted~~].
- 1.4. More generally, there is a risk that a tendering scheme of this nature could give rise to a 'race to the bottom' in terms of quality in order to achieve the lowest price, denying customers the benefits of higher quality crematoria services and facilities that have been delivered by increased competition in recent years.
- 1.5. For these reasons, Westerleigh believes that to the extent that the CMA determines it necessary to address a concern regarding weak consumer engagement<sup>2</sup>, its focus in moving towards its provisional findings should be on developing its proposals for information and transparency measures, to ensure that families have as much information as possible on the choices available to them.<sup>3</sup> However, to the extent that the CMA decides to pursue an LA tendering remedy,

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<sup>1</sup> The representations made in this response are made without prejudice to Westerleigh's position, explained in responding to the other working papers published by the CMA, that the CMA has not identified an AEC in relation to the provision of crematoria services in the UK.

<sup>2</sup> LA Tendering Proposal, paragraph 9.

<sup>3</sup> See further Westerleigh's responses to the working papers on information and transparency measures and remedy options for regulating the price of crematoria services, dated 27 February 2020 and 16 June 2020 respectively.

Westerleigh would strongly recommend that it should be focussed on funeral services only, with families free to choose from the crematoria options actually available within the area. This will ensure families are able to make a value judgement about comparative quality of facilities and not be restricted to the limited choice (if any) offered by the relevant LA.

## **2. Customer choice of crematoria must be retained**

- 2.1. In Westerleigh's view the Tendering Proposal overlooks the importance of quality to customers and is focused too narrowly on price. Westerleigh has submitted considerable evidence to the CMA on the importance of quality to customers. Those points are not repeated in this response. However, it is important to note that competition on qualitative aspects is a fundamental part of Westerleigh's business model and has driven competition in the areas in which Westerleigh is present and has entered in recent years.
- 2.2. In particular, where Westerleigh has entered a market in competition with a LA city crematorium (notwithstanding that such new sites may be located on the outskirts of the city), Westerleigh has generated significant increases in volumes at the expense of the incumbent crematorium. Westerleigh has submitted evidence on the existence of a 'qualitative pull' for its sites<sup>4</sup>, while the CMA itself has accepted that around a third of the customers of each of Westerleigh, Dignity, and Memoria compete on quality in order to attract customers from outside of their immediate catchment areas. Westerleigh's customer survey also confirms that quality is by far the most important factor for customers when choosing a crematorium, far more so than price,<sup>5</sup> and that customers travel to Westerleigh's sites even when there is another crematorium closer because of the quality and value offered by Westerleigh, as compared with neighbouring sites.
- 2.3. In these circumstances, any remedy which restricted customers' ability to choose a crematorium on the basis of relative quality, or otherwise unduly influenced customers to choose the lowest cost option, would significantly reduce choice and overall consumer welfare, and distort competitive dynamics in the crematoria sector. Moreover, it would give rise to a risk of a 'race to the bottom' in terms of quality.

## **3. Existing LA schemes restrict customer choice and highlight risks of conflicts of interest**

- 3.1. As set out above, Westerleigh's main concern with the CMA's proposal is that it will unduly restrict families' choice of the crematorium at which they hold their funeral. Indeed, existing LA low cost funeral schemes appear to be designed to increase volume at the LA's own crematoria, rather than enabling customers to make informed decisions about the choice of venue.

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<sup>4</sup> See further Westerleigh's response to the working papers setting out the CMA's competitive assessment of crematoria services in the UK, dated 2 March 2020.

<sup>5</sup> See summary of results of Westerleigh's customer survey, provided alongside this response.

- 3.2. The examples of existing LA schemes in England and Wales set out in the Tendering Proposal WP and the corresponding options for choice of crematoria venue are summarised below.<sup>6</sup>

Council	Crematorium choice	Crematoria - year of opening
Nottingham	1 (LA owned)	Nottingham (Wilford Hill) – 1931
St Helens	1 (LA owned)	St Helens– 1962
Cardiff	1 (LA owned)	Cardiff (Thornhill) – 1953
Salford	2 (both LA owned)	Agecroft – 1957 Peel Green – 1955
Sandwell	2 (both LA owned)	Sandwell Valley – 1961 Rowley Regis – 1962

- 3.3. This is very restrictive in the context of the relevant local markets. For example, in the case of Nottingham, the Council specifies its sole crematorium, Nottingham Crematorium. However, there is a very good choice of crematoria within the county of Nottinghamshire, with seven crematoria serving the area. Four of these crematoria were opened in recent years and offer modern facilities and a good quality service. In contrast, Nottingham Crematorium is nearly 90 years old and [✂].<sup>7</sup>
- 3.4. For this reason, existing LA schemes would not serve as an effective template for the development of a uniform approach to a LA tendering remedy, and highlight the risk that LAs tasked with running procurement processes may favour funeral directors willing to direct customers to the LA's own crematoria. In addition, it could inadvertently incentivise LAs to limit the information available to consumers, and discourage full disclosure of the available alternatives, the comparative quality of facilities and an objective assessment of the LAs' own crematoria at a time when LA facilities are often unable to offer the quality of service available at other crematoria. [✂].
- 3.5. Equally, there is a risk that funeral directors which are vertically integrated would bid for LA low cost schemes on the basis that any funerals purchased through the scheme would be held at the funeral director's own local crematorium. The vertically integrated funeral director would be incentivised to push customers towards their 'in-house' crematoria, including those customers without an initial preference, without good knowledge of available alternatives, or that rely on advice and a recommendation from the funeral director. Even where customers have an initial preference, the funeral director may market its own crematoria as a better option.

<sup>6</sup> The examples of the funeral service schemes in operation in Scotland do not appear to specify the choice of crematorium or cemetery in the same way.

<sup>7</sup> See [✂].

While this may help lower funeral costs for some customers, it would again unduly restrict choice and distort competition in the crematoria sector. It would be very difficult to monitor this type of activity by funeral directors as they may notionally offer a choice.

- 3.6. Furthermore, vertically integrated funeral directors would be more likely to win tenders against independent funeral directors as they can offer more competitive bids, factoring in the additional crematoria revenue they can earn from diverting customers to their in-house crematoria. This unfairly disadvantages independent funeral directors and ultimately restricts competition and choice.
- 3.7. For these reasons, it is vital that any tendering scheme ensures that customers taking advantage of LA scheme retain full choice over which crematorium is used, and offers full information on all crematoria available in the local area which can serve the families' needs, so that families can make an informed choice. This should include those crematoria in neighbouring LA areas (as is the case in relation to the funeral schemes currently offered in Scotland).

#### **4. Other comments**

- 4.1. Finally, Westerleigh notes that there would be a risk that not all funeral directors would have the requisite financial standing and resources required to participate successfully in the type of procurement processes envisaged by the Tendering Proposal WP. This could restrict choice of funeral director and risk concentrating market power in the hands of a small number of large funeral director chains for reasons unrelated to the quality or efficiency of their offering. As noted above, it is also likely that vertically integrated funeral directors would be better placed to offer competitive bids. If the remedy is taken forward the CMA would therefore need to be careful to ensure it is not designed in such a way that unfairly excludes smaller, independent, funeral directors.