

London Cremation Company

Submission in response to CMA's Market Investigation Working Paper on Local Authority Tendering Remedy Proposal published 20 February 2020

1. Executive Summary

- 1.1. This submission is made by the London Cremation Company ("LCC") in response to the CMA's working paper on Local Authority Tendering Remedy Proposal (the "Working Paper").
- 1.2. The submission is intended to highlight key areas where the CMA's analysis raises concerns for the LCC. In particular, the CMA has not gathered sufficient evidence of demand and supply by location, which is needed before a local authority tender proposal could reasonably be introduced.
- 1.3. We also consider, as is supported by evidence before the CMA, that certain areas of the country are more competitive than others and a national local authority tender proposal is neither warranted nor helpful. It would be unlikely to improve the conditions of competition and outcomes for consumers if imposed on a nationwide basis. By contrast, a series of local or regional offerings may be needed; this would depend on local conditions and requirements and whether further regional offerings over and above those that are currently provided by some local authorities is unclear.
- 1.4. Importantly, there are significant risks from the introduction of such a proposal that need careful consideration: (i) local authorities who own their own crematoria may face conflicts of interest that lead to self-promotion of less efficient or even higher cost facilities; and (ii) the tendering option may reveal information to the market that makes it operate with more transparency, encouraging oligopolistic pricing by funeral directors.
- 1.5. In principle both points could be addressed by a perfectly designed tendering process e.g. run by an independent trustee subject to the CMA's oversight instead of an LA with its competing crematoria. Effective tendering would reveal the lowest price for a perfectly specified basket of goods; and safeguards would prevent sensitive information becoming known. However, it would only take the slightest departure from the perfect tender for these risks to materialise: if information is inadvertently shared amongst funeral directors, or if a non-participating director gains insight into the pricing of rivals from the mere existence of the tender option.
- 1.6. Indeed, the worst possible outcome – a tacitly collusive, high and very visible price from which no local funeral director will depart – is a very real possibility, especially considering that the local authority and local business may seek to maximise political capital from the existence of the tendering process, rather than to maximise consumer outcomes. There are all too many examples of local authority tendering processes being captured by industry to promote "logrolling" at the expense of consumers.

2. The CMA's Findings

- 2.1. The CMA states that a number of local authorities (“LAs”) “*across the UK operate arrangements to give local residents access to funeral services at a pre-agreed fixed rate, below the typical local price.*”¹
- 2.2. Under such schemes, the LA does not itself provide the funeral services. The funeral services are provided to the bereaved by a funeral director, normally on terms, and at a price, agreed with the LA.
- 2.3. Annex A of the Working Paper provides more detail by LA. Our review indicates that the alleged “fixed rate” is not, in fact fixed, since a price is offered for a funeral but the definition of what is included in a funeral excludes additional items that might be thought of as part of a basic package; and what is within the basic package varies by LA. Great care is needed over the accurate specification of the underlying service, especially as this may vary with location within the UK, and with culture.
- 2.4. The conclusion is that some LAs exclude costs for a funeral where the items excluded may be regarded as essential by customers. For example, the CMA finds that a Nottingham Funeral has a surcharge for Friday funerals, which is often the day of the week in highest demand. St Helens offers a low rate – but it is for a restricted time slot, which may also not meet many mourners’ basic requirements. Cardiff does not include clergy fees or obituary notices, Salford charges extra for doctors, clergy, and choice of service. Mourners in those areas may regard these aspects as essential. Generally, use of a hearse is included except for Sandwell, where it is excluded, but it may be that the people who would typically use Sandwell will generally specify a hearse, meaning that the basic package does not include an essential component and can’t be used for comparison purposes without confusing like with unlike, or apples with pears. East Ayrshire and Dundee charge extra for a Minister/Priest or Celebrant, which may be considered essential by mourners at that location. Working on an assumption that the position is otherwise is unreasonable. While West Lothian excludes the cost of the cremation itself as a disbursement, which is clearly problematic when considering a basic package for a funeral service.² Many of these points can and should be checked with evidence from local communities.
- 2.5. Noting that existing schemes vary with respect to specification of the components of the funeral product, the CMA is consulting on the issue of the trade-offs involved between price and scope of the specified product. For example, the CMA asks: “*is the priority to make available a lower-cost ‘standard’ funeral, or a low-cost more restricted option?*”³
- 2.6. The CMA also considers the potential for wider operation of a basic standard low-cost service as part of any remedies package, both:
 - (a) As a standalone remedy, implemented either through a recommendation to LAs, or to Government requiring LAs to tender, or directly by the CMA by Order under the Enterprise Act 2002;
 - (b) In terms of how existing and prospective arrangements could supplement a price control remedy by providing data points to feed into or cross-check a ‘competitive’ benchmark for funeral pricing, which might be applied on a wider basis.⁴

¹ Paragraph 2, *Working Paper*

² Paragraph 14 *et seq.*, *Working Paper*

³ Paragraph 27, *Working Paper*

⁴ Paragraph 4, *Working Paper*

2.7. We note that the CMA is mainly concerned with:

- (a) effectiveness: the extent to which different remedy options are likely to be effective in achieving their aims, including practicability; and
- (b) reasonableness and proportionality.⁵

3. The CMA's Rationale

- 3.1. The rationale for including LA tendering as part of a remedies package “*would be as a response to any AEC we may find arising from weak consumer engagement on the demand side, due to factors such as emotional distress and time pressure.*”⁶
- 3.2. The CMA also notes that it may “*give funeral directors some certainty of the volume of business which they can expect*”,⁷ stating that this “*remedy could supplement competition ‘in the market’ with a degree of competition ‘for the market’, reflecting local cost and demand conditions, rather than regulating outcomes directly.*”⁸ As contemplated by the CMA, where a funeral director wins an LA tender, they “*would have the prospect of carrying out higher funeral volumes, this may result in lower (average) costs and may help reduce the prices which they agree with the LAs, and ultimately charge to consumers.*”⁹ The CMA has reviewed various LA schemes that are currently in place and alternatives for a new tendering scheme.

4. LCC Comments

- 4.1. The LCC’s comments centre on the principle that effectiveness and proportionality require that the impact of the CMA’s proposals be evidenced, trialled and modelled before they are introduced widely, in order to avoid adverse consequences for end users.
- 4.2. The LCC is concerned about the introduction of the LA tender being intended to be “for the market”, or “for part of the market”, and the impact that it may have on end user choices and volumes of cremations at proximate locations. The CMA appears to be seeking to influence the behaviour of customers and other suppliers where it states: “*Visibility of prices available through an LA scheme might also prompt lower prices from non-appointed providers (if there is sufficient consumer engagement).*”¹⁰
- 4.3. Much depends on the design of the product but if it is to meet the CMA’s aims it will need to be designed to increase the volume of LA offerings. To an extent this also presupposes that price will be an important factor in generating interest in the product and in generating volumes of cremations.

Potential conflict of interest

- 4.4. There is a very significant conflict of interest inherent in this proposal insofar as it relates to funerals involving cremation that is probably unresolvable and which will actively reduce and inhibit competition in the cremation sector.

⁵ Paragraph 8, *Working Paper*

⁶ Paragraph 9, *Working Paper*

⁷ Paragraph 10, *Working Paper*

⁸ Paragraph 10, *Working Paper*

⁹ Paragraph 10, *Working Paper*. The CMA also notes that local authorities are currently the providers of providers of last resort and are obliged to provide funerals in situations of funeral poverty under s46 Public Health (Control of Disease) Act 1984 for England and Wales and associated legislation for Scotland and Northern Ireland. See footnote 7 CMA working paper.

¹⁰ Paragraph 24, *Working Paper*

- 4.5. LAs collectively are of course the UK's major providers of cremation services. Consequently, being in control of such a tendering-based scheme for a local "full package" low cost funeral would put them in the privileged position where they can direct cremation volumes away from competing crematorium operators and towards their own crematoria. Additionally, LA control over such local schemes would potentially provide a significant disincentive to any competitor seeking to enter the local market.
- 4.6. In theory, this could be dealt with by means of a subsidiary local tendering exercise to select the crematorium to be included within the local scheme. However, it is impossible in the real world to see how any such tender process for cremation services could be run fairly by an LA in when its own crematorium stands to be a significant commercial "winner" or "loser" depending whether its own internal bid for inclusion in the local scheme is successful. In practice, it is inconceivable that an LA would ever allow its own crematorium to be unsuccessful and hence be excluded from the local scheme.
- 4.7. Bearing in mind that LAs operate c 70% of all crematoria in the UK, we consequently have very serious reservations as to whether such a scheme (insofar as it involves cremation services) can ever in practice be operated fairly if led by the LAs themselves. As currently proposed, we therefore believe that this conflict of interest on the part of LAs is insurmountable and will actively damage competition within the cremation sector.
- 4.8. This concern is further reinforced by the CMA's observation (para 17 of the relevant remedy paper) that some existing schemes require that the service takes place at a council-run crematorium (or cemetery) and that the CMA has not identified any of the existing LA schemes having access to crematoria at any discount to their standard rates. It would appear that the LAs operating such schemes are using them (in part) to drive volumes to their existing crematoria at full crematoria fee rates whilst requiring the chosen Funeral Directors to discount their own fees in exchange for participation in the scheme.
- 4.9. We suggest that a more appropriate, transparent and overtly fair structure would be for any such local tender arrangements to be structured and operated by an independent body, and not the local authority.

Artificial market transparency and scope for collusive outcomes

- 4.10. Additionally, funeral directors may be able to tacitly or even explicitly collude in relation to the tendering process: it may reveal information that is not currently public, whether through actual collusion if the tender becomes a focus for co-ordination, or simply through the revelation of information that is not currently public.
- 4.11. In an extreme case, there may be links between the LA and local business such that the tendering process is captured by industry, allowing "logrolling" benefits as industry and local government incentives align, at the expense of consumers.
- 4.12. The worst possible outcome would be a visible, high price based on a profitable price for the local funeral directors, and the use of a less efficient crematorium; notably this outcome is in the interests of both the LA and the tendering parties, and the consumer is not in the room to prevent the abuse. Absent very stringent and abnormally successful monitoring, how would the CMA or a regulator identify this abuse? Precisely because consumers may be vulnerable, they are very unlikely to identify that the option is not in their best interests where such abuse occurs.
- 4.13. It is important not to be naïve about the scope for abuse of such a process – as it was famously put, to put down the "rose-tinted spectacles" through which it is assumed that public

options cannot be captured. It is a selective and discriminatory approach to assume that incentives might arise to maximise in listed vertically integrated funeral providers, but not in City Hall: the maximisation may simply be more subtle and harder to detect, but may be just as damaging to consumers.

4.14. A safer approach may be not to encourage alignment amongst local providers at all.

Evidence

4.15. To date the evidence that prices have an impact on the volume of cremations has not been gathered on a consistent and sufficiently detailed basis for this impact to be evaluated carefully with regard to the effectiveness of the scheme in meeting end user needs and the proportionality in terms of its market distorting effects.

4.16. Accordingly, before any such proposal is introduced, we consider that as a matter of effectiveness and proportionality the proposal should be:

- (a) properly evidenced by reference to local demand conditions;
- (b) the extent to which production components and prices or price points are likely to have an impact on the volume of cremations at other proximate locations should be quantified; and
- (c) evidence relating to point (b) should be gathered on a consistent and sufficiently detailed basis.

Trialling by local area and local demand

4.17. The CMA accepts that the funeral products that are contemplated need to be specified and the offering needs to be attractive to end users. Testing local demand with products that may or may not appeal to local people will be needed. It is doubtful that a UK-wide approach is warranted or reasonable given the wide range of different demands by location that would respect the diversity of cultures, religion and difference that exist in modern Britain. Demand is likely to vary by location in accordance with cultural factors, religion, and other requirements of those paying for funerals.

4.18. We note that the CMA has gathered evidence of income but not wealth more generally, and facts such as whether the funeral is being paid out of the deceased's estate need to be understood if assumptions about product design and price are to be avoided. Please see Annex A of this submission for key points to consider.

4.19. Local demand may vary considerably. For example, areas with a high level of home ownership,¹¹ may have less demand for a standardised low-priced funeral package than areas with lower rates of home ownership, or other forms of wealth.

4.20. We understand that the CMA's theory is that the demand function is not operating well due to emotional distress, so the proposal is a supply side solution.

4.21. However, the extent and degree to which demand functions are, or are not, operating has also not been thoroughly evidenced, investigated, or quantified. The proposed regulated LA tender offering may, at one end of the scale, more than meet demand in a specific location and be wildly successful, or, be of limited interest making little difference. In principle, if the

¹¹ The CMA has to date not taken into account the fact that many at need funerals may be funded as costs of the estate of the deceased. This will depend on the value of that estate, among other factors. Please see Annex A below

tender LA offer were to generate significant volumes, they may lead to considerable switching and impacts can be foreseen in demand reductions elsewhere and ultimately of closures of other crematoria nearby. If there is a correlation between proximity and price, as the CMA has accepted, then it would be reasonable to expect switching depending on the price and local level of price elasticity. The CMA can and should test the theory on a pilot basis with relation to local alternative suppliers in particular localities before reviewing again before making any decision as to its wider introduction. When considered through the lens of effectiveness and proportionality it can be seen that a nationwide approach would be more or less effective in some places but not others, and disproportionate with relation to all.

- 4.22. Depending on the price point and components contained in the LA offerings, one difficulty will be the potential for the approach to eclipse actual currently revealed preference and demand for differentiated products, and undermine the scope for innovation with adverse consequences for consumer welfare. Put simply, the CMA may define a low-cost standardised offer at a price point under agreed volumes that generates market power for the LA in a local area and in a way that competes with currently differentiated and personalised services such that the market is distorted and other proximate funeral directors and crematoria adversely affected. The approach could reduce volumes at other crematoria and increase costs and lead to Funeral Directors offering a “cheap and cheerless offer” with the remainder of the market offering a more expensive personalised service.
- 4.23. Depending on the location, and all the actual factors that make up the choices that people are in fact making, a foreseeable outcome is the LA product sweeping up demand for the low cost offer and reducing volumes leading to increased prices for the more personalised offering provided by others.
- 4.24. To avoid such risks the LA offer could be introduced on a trial basis, firstly, only in areas with limited alternative proximate supply. Moreover, distance or proximity of other crematoria may also be affected by the attractiveness of the LA offer, with Funeral Directors savings on the package price leading to a greater willingness to travel further and charge more for the travel costs, ensuring no loss of revenue. These and other dynamic effects should be modelled.
- 4.25. Identifying a balance between the different factors and their attraction to different groups of people or segments within the demand side will depend on the extent to which the consumer welfare benefits can in practice be gained by introducing the LA offer. However, nothing in the offer will in fact change the level of emotional distress of the customers, and it is equally possible that the end customer may ignore the low cost offer, perhaps out of a feeling that the choice of funeral has more to do with respecting the deceased and willingness to provide a “proper send-off.” Trialling will allow care to be taken with product design and avoid the risk of disproportionate remedies that make little difference but do create market distortions from taking place.

Modelling

- 4.26. After trialling, the evidence gathered of the volumes of the services that prove to be attractive should be used to model more widespread application, before introduction in other locations. Dynamic effects such as the changes that may be observed with the potential for funeral directors to travel further and increase motoring costs to limit impacts on revenue, need to be understood.
- 4.27. Testing factors that may affect demand such as the advertising spend committed by successful funeral directors in promoting the LA offer, the amount of incentive that the increasing volumes over time and system of tendering will provide for successful funeral directors to push the product would also need to be assessed. So would the effect on other

funeral directors and crematoria locally, with attendant consequences for overall utilisation of capacity in the local area and consequences for economies of scale at other locations.

- 4.28. Other dynamic effects would also need to be modelled. Not only is there a prospect of innovation but of consumer welfare detriment. For example, if other crematoria were to avoid switching by also lowering prices and increasing throughput to retain volume, they may also be tempted to reduce slot times as well as prices, and reduce the service quality for end users. Much will depend on local demand and supply and should be modelled before taking a decision to introduce the offer on a UK wide basis.
- 4.29. The CMA recognises these issues and risks.¹² In order to address them before they occur it would be reasonable to now carry out evidence gathering for local demand, to offer the LA product on a trial basis by area, and to conduct modelling to enable effectiveness and proportionality to be properly assessed.

Evidence of low prices on end user choices: the impact of the tender offer on consumers and other market participants

- 4.30. There are risks to personalised and high quality service from the introduction of the tender option. These are primarily specification risks: even if the tender works to plan and results in a low price – which, as above, is by no means guaranteed – there is the question of what the tender specifies. If this is a “cheap and cheerless” offer, it may crowd out other more personalised services. Elsewhere in its market investigation papers, the CMA has identified that there are lower prices where crematoria are closer together, indicative that the geographic market is local.¹³ However, it has not, to date, conducted a geographic market analysis that assesses the extent and degree of demand and supply and competition that exists between crematoria at local level or the factors that affect choices at local level. The Ipsos Mori evidence indicates that the choice of crematoria is usually made before any contact has taken place with a Funeral Director. Factors informing that choice are currently unknown. Reputation appears to be of critical importance, based on recommendations from others who have been through a funeral experience.
- 4.31. In addition, while the Ipsos Mori evidence is both interesting and helpful to inform the understanding of end consumers’ decisions, another key constituency which has power to influence end consumers’ choices and which can be expected to take into account price and impacts on their profits are funeral directors. As far as LCC can divine, the CMA has not asked funeral directors whether they take prices into account either as a matter of the cost to them of a disbursement, or whether price has an impact on the total price and hence the budget of end customers.
- 4.32. As a disbursement that may simply be passed through to consumers, one could assume that funeral directors have limited interest in the price of a cremation. In practice, however, it seems likely that the price of the disbursement affects the revenue share available to funeral directors. We expect that funeral directors would be motivated to take into account cremation costs, and LA tenders, as part of the overall package of services offered to their customers. Funeral directors are neither bereaved, nor likely to be emotionally distressed, and they have an economic interest in the outcome.
- 4.33. Moreover, the CMA has found lower prices for crematoria with a close proximity to each other. This shows some degree of price-based competition that is currently taking place. In turn the effectiveness and proportionality of the LA tender offer will have different impacts

¹² Paragraph 32, *Working Paper*

¹³ Paragraph 27 *et seq. Crematoria: Outcomes*

depending on the characteristics of demand and supply in the different local geographic markets.

- 4.34. For example, the CMA has itself noted that in certain areas low cost services are taken into account by Funeral Directors. For example:

“Cardiff Council told us that its scheme ‘has provided a comparison point for families to consider when organising a funeral and a benchmark for local funeral directors to consider when establishing a low-cost service as a business decision.’”¹⁴

- 4.35. Furthermore, documents disclosed by Dignity, the Co-Op, and Funeral Partners also indicate regional or local pricing, indicative of different local markets and local market characteristics.¹⁵

Local cultures, religions and traditions vary, and impacts may also vary by location

- 4.36. The CMA recognises that *“Local needs may differ by LA, such that adopting an overly prescriptive uniform approach across the UK may undermine benefits from local flexibility with respect to product specification or tender design.”*¹⁶

- 4.37. The LCC has submitted evidence that [redacted].¹⁷ At the hearing with the CMA, the LCC submitted that, in their experience, the Hindu community was more price sensitive than other cultural groups because their cultural beliefs placed importance on what happened after the cremation, and so were less concerned about the quality features of a crematorium at the time of the service.¹⁸

- 4.38. This also suggests that pricing sensitivity will vary by location to an extent and degree that is not currently fully understood on the data available to the CMA. The impact of the proposed LA tender offer is also likely to have effects that differ depending on local cultures, religions and traditions. The CMA currently has no evidence on these matters; such evidence is required for a proper assessment of effectiveness and proportionality of the LA tender remedy.

- 4.39. LCC has also trialled price offerings to attract customers to off-peak times in certain locations which had some success, indicating that price is a factor that some consumers do consider. Indeed, the LCC understands that funeral directors have been offering off-peak times as “Cheap Funerals”. This also indicates that price is a factor for some people in some places.

- 4.40. The LCC also observed that people were generally not prepared to trade price for their preferred time of day; so qualitative factors such as the time of day are also important considerations when customers choices are being made. One way of thinking about this is to consider price a factor among a range of others that some end users may value more highly, and some end users may make different trade-offs from others. We do not at present know the number or proportions of those decisions or the local differences or similarities by location on the evidence gathered to date.

- 4.41. Local conditions of demand hence depend to a degree on the attitudes and religions of local people where the issue of price may vary in the context of a range of factors that are taken

¹⁴ Paragraph 24, *Working Paper*

¹⁵ See the CMA working paper on Funeral Directors pricing

¹⁶ Paragraph 32, *Working Paper*

¹⁷ See LCC submission [redacted]

¹⁸ LCC hearing evidence paragraph 24

into account. Whether customers are more concerned about other factors such as personalisation or honouring the deceased and the range of qualitative aspects of the service is presently unknown and is evidence needed by the CMA to assess effectiveness and proportionality.

Proximity

- 4.42. The proximity of crematoria to each other varies considerably across the UK. It may be the case that the high-priced crematoria are in locations that are some distance from other crematoria, whether private crematoria or local authority crematoria.
- 4.43. LCC's crematoria are in close proximity to others, for example the Hendon LA is near to LCC's Golders Green crematorium and represents an alternative choice for some customers, which has an impact on its business. It has submitted that "*While every effort is made to contain costs...Costs are also compounded by an inability to recover VAT. Again, by contrast, it is unclear whether LAs are required to pay business rates, which private sector organisations must do. This is certainly a perceived disadvantage within the private sector. The CMA also noted that both private and local authority crematoria operators benchmark their fees with those of local rivals.*"¹⁹
- 4.44. The LCC has also submitted evidence on the degree of [switching]. This provides evidence that customers can and do switch between crematoria and hence place value on the factors that they are taking into account in their decision making.²⁰ Dignity, Memoria, and Westerleigh have submitted evidence of "out of area" customers, again showing that people do use crematoria beyond the areas that the CMA has defined to be "in area".
- 4.45. Moreover, the Ipsos Mori evidence indicates that customers are largely making their decisions about funeral directors and crematoria based on the reputation of the firms in question.²¹ Recommendations are based on experience of the care and handling of the funeral.
- 4.46. Internal documents cited by the CMA, for example from Funeral Partners,²² show that major firms are focused on the experience end users have in their service offerings, and that it is important in generating new business. This dynamic aspect of demand and how it is reinforced by Funeral Directors is otherwise missing from the CMA's assessment and deserves closer scrutiny.
- 4.47. For example, Funeral Partners shows that where it offers a median price for a personalised and differentiated experience that will generate greater volumes of recommendations and increases in volumes of sales.²³ This shows that Funeral Partners, one of the major players in the industry, understands the importance of reputation, including personalisation of offering and price, in generating volumes of recommendations and hence future business. However, price may not determine volume as much as the ability to personalise the product.

¹⁹ Paragraph 61, *Updated Overview of Key Research and Analysis*

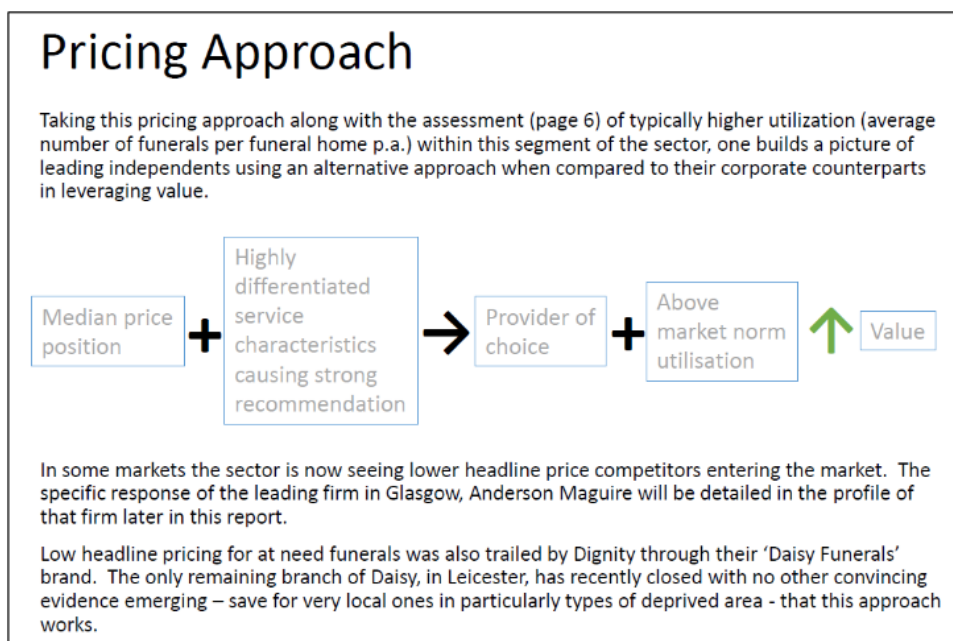
²⁰ This evidence of switching is supported by other evidence of switching before the CMA – see paragraph 60 *et seq.*, *Updated Overview of Key Research and Analysis*

²¹ See Q 49,50 & 51

²² Paragraph 42 *et seq.* *Funeral Directors Pricing Levels and Trends*

²³ Figure 27, *Funeral Directors Pricing Levels and Trends*

Figure 27: Funeral Partners research on independents' pricing approach (2016)



Source: Funeral Partners

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4.48. When thought about as the generation of business over time the above is evidence both that a dynamic is taking place, and that a “median price” is important for the entire package of funeral services to end users and the budget of the end user. It also shows that ‘highly differentiated characteristics,’ or personalisation of the offering, is important to the experience of the bereaved. These are matters of some significance in generating recommendations and further business. Since utilisation of capacity reduces costs, the increase in utilisation will add value to the supplier as noted in Figure 27.

4.49. The overall equation provided in the Funeral Partners evidence is likely to be both credible, because of its source, and realistic, and appears relevant to the issue at hand. The note of caution in the evidence is also specifically drawn to the CMA’s attention with relation to the design of the LA tender offer:

“Low headline pricing for at need funerals was also trialled by Dignity through their Daisy Funerals brand. The only remaining branch of Daisy, in Leicester, has recently closed with no other convincing evidence emerging – save for very local ones in particular types of deprived area – that this approach works.”²⁵

4.50. The implication of the above is consistent with the evidence from the LCC, that price and the extent and degree to which it is more or less important and traded off against other factors in purchasing decisions may differ by location, whether because of local regional levels of income, or religion or cultural factors.

4.51. The CMA should therefore gather evidence of likely impact by location and test and trial the offer by area and model the approach before proceeding with it as a one-price-for-all offer for the entire UK.

²⁴ Figure 27, Funeral Directors Pricing Levels and Trends

²⁵ Figure 27, Funeral Directors Pricing Levels and Trends

Mechanisms and Regulation

- 4.52. The Working Paper considers the mechanism through which the LA tender remedy could be implemented. Our views are that whatever the mechanism, it will involve costs and it is unclear whether the benefits that the CMA is seeking to achieve will result.
- 4.53. The recommendation option, with inherently greater levels of decentralised and local decision making, rather than centralised decisions or orders, would allow for greater levels of flexibility. If evidence gathering, trialling, and modelling were put in place the CMA could identify for itself, or the proposed industry regulator, the relative success or failure of the LA offers by location, and monitor the position and local markets over time. There would be attendant costs to bear which may be incremental to the regulatory system that is being contemplated.

Use of LA tenders as outcomes or price benchmarks and capacity constraints

- 4.54. For the LA schemes to provide useful data there would be a need for ongoing monitoring and assessment, and a mechanism for ensuring that data is gathered assessed and used in a consistent fashion. How that is to be performed and by whom is unaddressed. This may be a cost that could be borne by regulation.
- 4.55. FDs are not tendering in isolation and will offer discounts based on retaining existing volumes or gaining incremental volume. Any discount offered would therefore be based on expectations of incremental volumes by FDs and should not be taken to indicate the competitive price.
- 4.56. It should not be overlooked that FDs have capacity constraints, and will therefore tender for inclusion in the scheme based on their existing unused capacity. If the scheme succeeds no single FD will be able to cope with the additional volume and therefore it will require the creation of co-operating consortia of FDs to handle the volume.
- 4.57. The CMA accepts that there *“is currently only limited geographic coverage, and so a limited number of data points, which may themselves reflect local factors.”*²⁶
- 4.58. As discussed above, local demand and supply side factors are very likely to differ by location and a full geographic market analysis is needed.

5. LCC Responses to Consultation Questions

- 5.1. We have set out above our full response with reference to evidence where available. Below we provide summary responses to the questions raised by the CMA that need to be read with the above points in mind.

LA tendering as a remedy option

(a) To what extent do respondents think that wider introduction of tendered LA low-cost funeral schemes, intended as a response to problems identified on the demand side of the market would be:

(a) effective; (b) proportionate.

In principle, we see that the idea of tendering has some attractions if conflicts of interests and scope for collusive activities is resolved. As described above, we consider that introduction of a LA Tender offer as currently suggested without gathering evidence, trialling, and testing the offer by

²⁶ Paragraph 48(a), *Working Paper*

location and resolving the above structural issues would be inappropriate, would neither be effective nor proportionate, and would create significant risks of consumer detriment, as well as market distortions.

The LA Tender offer may also involve a misunderstanding of the issue. People are emotionally distressed at the time they are arranging a funeral. They may need to personalise funerals. They may want to be treated with care and attention as indicated in the Ipsos Mori Polling evidence. It may be that part of the function that the funeral is fulfilling for the bereaved is one of providing them with an important cathartic experience through which to honour the deceased and to provide the bereaved with psychological relief (often called closure).

Notwithstanding the CMA's reasonable motives in seeking to provide a solution to a perceived demand side deficiency, the issue identified may not in reality be capable of being resolved through an LA tender offer. Put another way, the emotionally distressed who need a compassionate response as part of their grieving process are unlikely to be assuaged by being offered a price reduction, but personalisation may be highly valued. On the other hand, there is evidence that price is important to some people; of the approximately 600,000 potential customers there may be a significant proportion that would be attracted to a new standardised low-cost product. To know whether the proposal would be practical, effective, and proportionate would require local evidence, trialling, and modelling, as described above.

Please answer with respect to each of the implementation options available, that is: (i) a CMA Order applicable to all LAs; (ii) a CMA recommendation to LAs; (iii) a CMA recommendation to central government(s) that it/they should create a statutory responsibility on LAs.

We consider for the reasons set out above that a recommendation to LAs would provide the most flexibility and the greatest level of local autonomy, subject to local evidence gathering, trialling, and modelling by either CMA or the new industry specific regulator.

(b) How should the specification of the funeral product to be provided under a LA scheme be determined? (i) Should the focus be on delivering a competitive negotiated price for a 'standard' funeral package, or addressing funeral poverty through ensuring availability of a low-cost respectful funeral option. (ii) How much scope, if any, should there be for variations between LAs? (c) What might be potential unintended consequences of wider LA tendering for low cost residents' funerals?

We consider the contemplated product to be unlikely to address the needs of people at an emotional time, and potentially representative of a misunderstanding of the function of a funeral as a cathartic process for the bereaved as part of their grieving process. This may be something that they are paying for at present; and it may be the basis on which they are making recommendations.

Equally, it may be the case that some part of the emotional distress felt by people when arranging funerals may impact their decision making and involve them in less cognitive ability to assess prices and product offerings. As such, a lower cost and more standardised package may be of some benefit to some proportion of people. How many is unknown. The impact on other funeral directors and crematoria would need to be assessed in the local market in which they operate, taking into account local demand, cultural, and religious factors in particular. Care will need to be taken as we have suggested evidence gathering, trialling, and modelling by location to avoid ineffective and disproportionate outcomes and consumer detriment.

c) What are the current barriers to LAs establishing tendered low cost funeral schemes (eg available resources, other priorities, not regarded as a LA responsibility, etc)?

We consider this question can best be answered by LAs.

(d) How might they be overcome?

As described above, the issue identified by the CMA, of people making decisions at an emotional time not reflecting the outcomes in competitive (commodity) markets may in part be misconceived. The function of a funeral involves the resolution of grief. This is an emotional issue which is not easily comprehended when seen through the narrow lens of law and economics. For example, reviewing and categorising the decisions that are being made and the choices that are being exercised in terms of the “price and quality” of service involves language that is likely to misunderstand and misrepresent the true nature of the decisions being made.

Those decisions are quite likely being made rationally, but against a different requirement than the CMA has, perhaps, identified to date. One part of the function of a funeral is to honour the deceased, and another is to help assuage the emotions of the bereaved. The ability of people making decisions about the nature and type of funeral they want, the level of personalisation that they want, and the way they want to deal with these issues is intensely personal for those closest to the deceased, often involving families and friends in decisions about the nature and type of funeral. Their collective demands of funeral directors and crematoria have produced the current structure of supply with a premium on services that are compassionate, and tailor-made. The evidence disclosed to date suggests that authenticity for the bereaved, and their willingness to recommend funeral services to others depends, on a level of satisfaction that is unlikely to be addressed through a standardised funeral at a low price.

Lowering the barriers to entry may not therefore increase the attractiveness of a standard product.

As suggested by Funeral Partners:

“Low headline pricing for at need funerals was also trialled by Dignity through their Daisy Funerals brand. The only remaining branch of Daisy, in Leicester, has recently closed with no other convincing evidence emerging – save for very local ones in particular types of deprived area – that this approach works.”²⁷

On the other hand, the level of detailed information that has been gathered to date is limited, so a state-controlled and imposed price for a full funeral may be more successful than previous propositions. The Ipsos Mori survey is too small a base of those affected. There are approximately 600,000 deaths per year, and the poll reached a very small proportion of those affected – particularly so when bereaved families are taken into account. The Ipsos Mori evidence is too small and framed in a way that cannot pick up local, regional, religious, cultural and other differences that may well exist; that level of difference in demand may be masked by lack of evidence. The LA tender offer may be unattractive, or it may be successful, and to a greater extent than foreseen by the current local authority offers, or private sector propositions. Testing and offering on a trial basis, as suggested above, would be a reasonable way forward; introducing a nationwide offering without such further evidence trialling and testing could appear to be rash.

(e) What are the barriers to funeral director participation in LA tenders for resident schemes? How might they be overcome?

We consider that this question may best be answered by funeral directors.

(f) What are the barriers to take-up of LA resident schemes by bereaved families? How might they be overcome? What types of bereaved people/families would be most likely to use such schemes?

We consider that this question may best be addressed by looking closely at the existing evidence from bereaved families, contained in the Ipsos Mori evidence.²⁸ This shows that people recommend funeral directors based on their experience and the degree of care and attention with

²⁷ Figure 27, *Funeral Directors Pricing Levels and Trends*

²⁸ See responses to Q 49,50 & 51

which a funeral is performed. If the funeral on offer from the LA were to be a fully personalised service offered at a lower price, it is likely to be attractive to bereaved families. However, providing a fully personalised service at a low price would be unlikely to cover the costs involved in the provision of that service.

As discussed above, the level of detailed information that has been gathered to date is limited. The Ipsos Mori survey is too small a base of those affected to pick up local, regional, religious, cultural, and other differences that may well exist; demand for low cost services may be revealed if further evidence were obtained. Moreover, if a test were conducted of an offer on a local basis over a period of time under controlled conditions, and evidence gathered and assessed, it may be possible to identify more price sensitive demand.

One major difficulty with such an approach being imposed from the supply side, rather than being led by customer choice, is that the demand may be generated in response to the product. If so, the proposal from the CMA would not be one which meets an unmet need, it would be one which is generating a new demand. As such it would be difficult to reasonably consider that such an approach would allow the market to function more effectively, nor would it allow innovation to thrive, and nor would it promote competition; instead it would be market distorting. To avoid such risks the CMA should test its proposals in the market for effectiveness and to ensure a proportionate solution is put forward, if needed.

(g) What impact have existing LA schemes had on wider pricing for funerals in their respective local areas?

We understand from the CMA's evidence that the current LA schemes have met with limited response and low take up. None are in areas where the LCC operates.

(h) What should be the CMA's priorities for further analysis or evidence gathering on existing schemes?

See above where we suggest that effectiveness and proportionality require further evidence to be gathered about local demand and supply.

LA tendering as basis for price benchmarks

(i) Do respondents think that the outcomes of current and future LA tendering exercises for provision of resident funeral schemes could provide useful data points for benchmarks to feed into price controls?

We consider that benchmarking of alternative competitive markets could, in principle, be done, but should be confined to a basket of other comparable real-world situations. An artificially generated product that exists because of a theoretical concern is, in principle, not an appropriate benchmark for the price that would obtain in a competitive market, nor should it be used as a starting point or benchmark.

Use of competitive market benchmarks

A more appropriate alternative would be a detailed regional or local market comparison where comparative local markets are used to benchmark price caps in less competitive locations or regions. For example, if the CMA could find local markets where there is competition between crematoria and low prices (such as exists in North London), those prices are capable of being taken as potential benchmarks to be applied to other local markets where there is no competition and which require price control. It may be possible to make such further assessment from more careful local market analysis that exists within the UK.

There are numerous indicators from the disclosed internal documents through to CMA statements referencing location and which indicate that local or regional markets exist. At present the investigation of local demand and local cultural, religious, and other factors has not been conducted.

Other comments

(j) Please provide any other relevant comments or observations on these proposal

We have provided our “other comments” above in the earlier sections to this response.

Points for the CMA to Note regarding Payment of Funeral Costs

1. The CMA has assessed the impact of income on choices made when arranging funerals in its Influence of Income on Funeral Choices Paper, published 30 January 2020 (the “**Income Paper**”).²⁹ The Income Paper is based upon the average income of the local authority area, i.e. the income of the person arranging the funeral’s income, not the wealth of the deceased.
2. In the Income Paper, the CMA finds that “there is no correlation between the take-up of simple funerals and the level of average income within a local authority area”, and that “overall there appears to be a weak correlation, if any, between income and funeral choices.”³⁰ As a conclusion, the CMA states that “the quantitative analysis, internal documents and responses to information requests indicate that choices of funeral package are not strongly correlated with the level of income or deprivation.”³¹
3. We submit that the CMA has asked the wrong question in assessing whether there is an impact on funeral costs which is linked to the affluence of a particular area. The question the CMA should ask is not the income of the personal arranging the funeral (or the average income in a particular area), but rather the extent to which funeral costs are provided for by the deceased’s will, or paid out from the deceased’s estate.
4. It is submitted that, where funeral costs are paid out of the estate, in many cases those arranging the funeral are unlikely to scrimp in the same way that they might wish to (or have to) if paying for the arrangements from their own income.
5. This is particularly likely to be the case where the deceased has specified in their will or in a funeral plan what they want to be included in their funeral plan. It may also be the case, where a funeral plan has been agreed by the deceased, that it would be subject to an agreed fee.
6. In relation to the provision for funeral costs in a will, the Law Society guidance for consumers on making a wills highlights that individuals should consider the type of funeral they want when making a will,³² so that provisions can be included covering this. Our understanding is that it is common for a will to provide that the residuary be paid to a beneficial after the deduction of funeral costs and other expenses such as probate fees. Moreover, regarding the funeral costs of those who die without executing a will, funeral costs can usually be paid for from the estate of the deceased under the intestacy rules (as long as the estate has sufficient assets). The rules regarding calculation of inheritance tax generally permit the deduction of reasonable funeral expenses from the estate before the calculation of inheritance tax owed. Moreover, consumer guidance relating to this is easily available online. For example, the Co-Op has published an article explaining this for consumers.³³
7. We recommend that the CMA conduct research into the source of funds used to pay for funerals, rather than try to find correlations between average incomes and funeral expenses in a given area. This is especially needed as the at-need market is likely at once to encompass both the needy, and the most well-off: the unplanned funeral and the self-insured funeral paid from a large estate are otherwise lumped together.

²⁹ https://assets.publishing.service.gov.uk/media/5e32d222ed915d09556ba508/Influence_of_income_on_funeral_choices.pdf

³⁰ https://assets.publishing.service.gov.uk/media/5e32d222ed915d09556ba508/Influence_of_income_on_funeral_choices.pdf

³¹ https://assets.publishing.service.gov.uk/media/5e32d222ed915d09556ba508/Influence_of_income_on_funeral_choices.pdf

³² <https://www.lawsociety.org.uk/for-the-public/common-legal-issues/making-a-will/>

³³ <https://www.co-oplegalservices.co.uk/media-centre/articles-sep-dec-2017/can-you-pay-funeral-expenses-out-of-the-estate/>