

London Cremation Company

Submission in response to CMA's Market Investigation Working Paper on Remedy Options for Regulating the Price of Funeral Director Services at the Point of Need 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 Remedy Options for Regulating the Price of Funeral Director Services at the Point of Need (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 LCC does not consider that the CMA has established a sufficient basis for the imposition of a nationwide price control.

2. General Concerns

The CMA's current thinking is that if implemented, a price control remedy:

- (a) Is likely to apply to all providers of funeral director services in the United Kingdom (UK) (paragraph 38);
 - (b) is likely to apply a maximum price to a defined 'benchmark' package of funeral products and services (paragraph 59);
 - (c) could exclude disbursement costs, albeit potentially with an obligation to pass these costs onto customers without a mark-up/profit margin added (paragraph 57);
 - (d) would be set by reference to available pricing data for comparable products and services provided across the UK (paragraph 61);
 - (e) would be accompanied by a recommendation to government for the establishment of a new regulator which would eventually assume responsibility for any price control regulation (paragraph 84);
 - (f) would initially be implemented through the CMA's order-making powers. We are considering whether price controls overseen by the CMA should be introduced on a time-limited basis as a transitional measure, for example until a new regulator is put in place (paragraph 86)
- 2.1. The LCC raises a number of concerns about the CMA's evidence-gathering process, and whether it has sufficient evidence for the application of a nationwide price control remedy in its submission on the working paper on Remedy Options for Regulating the Price of Crematoria Services.
 - 2.2. To the extent that those concerns are generally applicable, they are repeated here. In particular, the CMA must conduct a proper assessment of the geographic market, and

demand and supply by local geographic area, in order to understand whether a price cap remedy is likely to be a proportionate or effective measure.

3. Particular Concerns Relating to Funeral Directors

- 3.1. The CMA recognises that the market for funeral directors is fragmented, and that funeral services are highly differentiated:

“The funeral directors’ industry is fragmented, consisting of an estimated 2,302 companies, of which over 70% are small businesses operating with/from one branch.”¹

“Funeral director services are a differentiated product, with the products and services purchased, reflecting to some degree the wishes of the deceased and the bereaved.”²

- 3.2. The pricing and profitability of the Funeral Directors are such as would be expected in a competitive market; they vary considerably and there are an immense number of different players. This is important when considering whether there is a need for a nationwide cap – is it acting as a remedy to a nationwide problem? It is not clear that is in fact the case – a small number of players have consistently increased prices and there is a case that two players (Dignity and Co-op) have increased profits – but that is not a nationwide problem caused by all the players in the market.

- 3.3. When defining the remedy, the CMA should tailor the remedy to address the entities that have increased prices and profits. If not the price cap will be set at a level that becomes a target price for all players in the market.

- 3.4. Moreover, there are considerable risks in specification and product definition in funeral markets. How the CMA will be able to define a product, upon which to impose a price cap, across such a fragmented and differentiated sector will be a major challenge.

- 3.5. The CMA refers to the possibility of defining a “standard ‘benchmark’ package”³ which could be specified. However, in defining and price capping this ‘standard’ package, the CMA risks:

3.5.1. State mandated products. Funeral Directors currently offer a wide range of services tailored to the bereaved’s needs. If a state mandated package is offered Funeral Directors will be able to price their exiting products to meet the target price for the regulated offering especially where they are currently offering services or components beneath that level. Also, the marketing of the product could be counter-productive. A state mandated basic package, could be promoted and marketed by Funeral Directors and seen to be a “cheap and cheerless” alternative, or the “regulated basic package” against which more personalised offerings will appear more attractive (upselling). It could easily become the lowest price point in the market and very easily lead to an increase in the volume of more expensive personalised products.

3.5.2. We understand that there has in fact in recent times been a considerable shift toward personalisation of funerals. End customers value the care and attention that is paid in managing a funeral as a personalised experience for the bereaved and their families and friends. This is evidenced by the Ipsos Mori poll responses to questions 49, 50, and 51 and subsequent responses on how important the approach taken by funeral

¹ Paragraph 30(a), *Working Paper*

² Paragraph 30(b), *Working Paper*

³ See, for example, paragraph 34, *Working Paper*

directors is to the recommendations being made for future business by end customers. As can also be seen from the Funeral Partners documents disclosed in the CMA's funeral director pricing paper; the major players understand that the success of their business depends on their offerings being personalised, which adds increased value to both end customers and the suppliers. Funeral directors will probably immediately appreciate that offering a basic package that could undermine their reputation will be seen as a threat- and they are incentivised to use many different influencing techniques to steer end customers away from it.

- 3.5.3. In addition, where the current costs of components in the package that would be regulated are below the package price offer, funeral directors could see the regulated offer less as a cap on prices and more of a target of prices that have been set and are therefore reasonable to charge. Cost components could also thus rise.
- 3.5.4. Much depends on the basis chosen for setting prices, and a uniform UK-wide price for a basic package based on the CMA's current price and cost information is likely to impose outcomes that will inevitably disproportionately benefit some parts of the country and not others; hence some people and not others. This is because:
 - 3.5.4.1. There is considerable evidence that prices and costs vary by location
 - 3.5.4.2. local demand varies by location and religious group.
 - 3.5.4.3. Suppliers refer to regional pricing in their disclosed documents.
 - 3.5.4.4. The CMA has accepted that crematoria which are more proximate to each other exhibit lower prices than those that are further away from each other.
 - 3.5.4.5. The evidence before the CMA is that there are thousands of funeral directors. Their prices and profits vary very considerably.
 - 3.5.4.6. It should be borne in mind that a highly fragmented market with thousands of suppliers and hundreds of thousands of end customers, which exhibits very different prices and margins may be an indication of a market that is effectively competitive. It is also likely that some regions are more competitive than others. However, this can't easily be assessed from the evidence currently before the CMA.
- 3.6. Evidence is available from the Ipsos Mori Poll that over 80% of end customers chose the Crematoria before the funeral director. The alternatives to the choices made would be the starting point in the enquiry for substitutes and then the locations of those substitutes.
- 3.7. If the market is more like a market for wedding venues – where the type and location of the church or alternative venue is important – substitutes will vary depending on individual requirements.
- 3.8. If the market is like the supermarket where customers shop every week then the distance to the shop will be important if a component of demand is convenience. Proximity then becomes important to the customer- and catchment areas can be defined with relation to the distance that a shopper is willing to travel. Here there has been no direct questions asked of customers about the alternatives that they chose and why they choose them. The LCC understand that many people use its facilities because of family associations and the iconic nature of the buildings. What the alternatives are to its locations are not known- because the LCC knows only once a customer has decided. In order to understand demand, the CMA

has to define requirements and alternatives and then understand locations. Here the assessment is based on assumptions and extrapolations but is not, so far backed up with direct evidence from customers.

- 3.9. The catchment areas that are relevant for geographic market definition are the areas which are home to the location of alternatives or substitutes. They may, like supermarkets be determined with relation to the locations from which those attending a funeral have travelled. An important component may be the location of the deceased. Another may be the distance people need to travel after the service to a reception or wake.
- 3.10. An exit poll would establish some evidence of the regions, as is commonly done by the CMA in supermarket cases.
- 3.11. However, we consider that a reference to a hypothetical model of driving time based on a hypothetical cortege speed calculated backwards from estimates of speeds and distances from the deceased's house is not likely to be robust as evidence of the parameters of demand.
- 3.12. If convenience and hence proximity to a location is important, it is also likely that actual drive times may be faster or slower depending on distance, actual speed and or different types of road and traffic. The CMA appears to be relying on a complicated set of assumptions; none of which is based on actual customer evidence.
- 3.13. Furthermore, it seems the CMA calculated the hypothetical distances from the deceased's home, which is often not likely to be the relevant the starting point (most journeys for the deceased start from either the mortuary or a funeral director's refrigerated facilities). The deceased's home is also unlikely to be the starting point for the majority of funeral attendees. Exit polling may further illuminate this, if it is now conducted robustly.
- 3.14. If a more detailed investigation of competition with relation to the actual substitutability between crematoria were to be conducted, we expect it would show that certain regions of the country have different demand and supply conditions, and some are a lot more competitive than others. Unfortunately, the CMA's approach is unclear and compounded because it has taken post codes rather than exit polls as evidence for location, and has not therefore gathered evidence of actual catchment areas. The consequence is that competition between, for example, funeral directors in NW11 and N2 will not have been identified, even though they are geographically adjacent and both near the LCC's Golders Green Crematorium.
- 3.15. Prices do appear to be lower in areas where crematoria are more proximate. Funeral director documents indicate that they set prices regionally, and we know that crematoria prices are set with relation to the proximity of other competing crematoria.
- 3.16. As a result, the outcome of the imposition of a nationwide pricing package, based on either prices or costs that do vary by location will thus likely give rise to disproportionate benefits to people living in some areas and not others. As such it is inherently disproportionate.

4. Cremation Pass Through

- 4.1. The CMA has indicated that it is considering whether there should be a requirement that disbursement costs are passed through to the consumers at cost.⁴ The CMA's reasoning

⁴ Paragraph 57, *Working Paper*

appears to be that this would prevent the funeral director price cap having unintended consequences at other levels of the market, such as crematoria and cemeteries.

- 4.2. However, this reasoning ignores the fact that funeral directors whose margins are being squeezed by a price cap on the 'standard' package, may seek to recoup those margins on other funeral products, in which they effectively take a revenue share of the overall consumer budget. This would be achieved by keeping the price of disbursements as low as possible, i.e. a price cap on funeral directors may *de facto* result in negative consequences for crematoria, and add to funeral directors' margins, without passing on such disbursement savings to consumers.
- 4.3. The ostensible reason for the price cap is to control prices and excessive profits at the level of the funeral director. There is a serious risk that neither of these goals will be achieved; funeral directors may increase prices (and margins) for personalised funerals by comparison with the basic package, and may increase price components in the basic package where they are currently pricing beneath the cap, while at the same time seeking costs savings on crematoria costs; where competition is already effective by location the outcome will be to increase competitive pressure and incentives for funeral directors to shop around where they can in proximate locations, such as London.
- 4.4. [X]

5. Responses to the CMA's Consultation Questions

- 5.1. We set out below the LCC's responses to the questions raised by the CMA.

Aims and Approach of a Price Control Remedy

- (a) *Do you agree that the introduction of a price control likely to be an effective solution to remedy any AECs and any resultant, or expected, detrimental effects on customers should they be found in this market investigation?*

The LCC highlights the fact that CMA guidance indicates that market-based solutions should be preferred, and AECs should be dealt with through market-based solutions which significantly increase competitive pressures in a market.⁵

As a starting point, the LCC is not convinced that the CMA has made out a case that AECs are present, for which a remedy should be imposed.

In all events the LCC considers that the introduction of a nationwide cap is unlikely to be an effective solution. A nationwide cap would serve to entrench the position of key suppliers and limit the opportunity for smaller players. Nor is such an approach needed to remedy the issues raised by a small number of players that have continually raised prices and that potentially make excessive profits.

- (b) *Do you agree that the introduction of a price control remedy to be a necessary and proportionate solution (paragraph 19) to remedy any AECs and any resultant, or expected, detrimental effects on customers should they be found in this market investigation?*

⁵ Paragraph 300, CC3

As above, the LCC does not consider the CMA has gathered a sufficient evidential basis for the imposition of a nationwide price control. To do so on the basis of the evidence that has been gathered would clearly be unnecessary and disproportionate.

Moreover, the LCC considers that the imposition of a price control remedy would be unnecessary and disproportionate in those areas of the country where competition is taking place. The LCC considers the areas in which it operates, such as North London, to be competitive and there is no basis for price capping on those locations which are effectively competitive.

Price control design considerations

(c) *Do you agree that all funeral directors should be subject to a price control remedy (paragraph 38)?*

Given that the CMA has found that funeral directors are a fragmented market with differentiated products, it seems problematic that the CMA would seek to introduce a 'one-size-fits-all' remedy like a price control remedy, which appears to be at odds with its own guidance on remedy design given the risks involved.

(d) *Do you think there is a requirement to limit the application of any price control regulation to exempt certain providers and if so, what should the criteria for exemption be (paragraph 39)?*

The LCC considers that [X] only certain areas of the country are problematic. If the question were to be whether certain areas of the country should be excluded from the price cap, and certain areas were included, a proportionate remedy would be applicable to those areas where there is shown to be an AEC or AECs. Rather than looking at exceptions to an overly broad general rule, the outcome would be the targeted application of a proportionate remedy to some areas and not others.

(e) *Do you agree or disagree with the suggestion that a maximum price could be applied to a benchmark package of products and services (paragraph 59)?*

The LCC has serious concerns in relation to this proposition. Many of these concerns are raised in its comments above and the submission on the working paper on Remedy Options for Regulating the Price of Crematoria Services.

In particular, the LCC is concerned about the methodology through which the benchmark package of products would be chosen, in a market in which the CMA has found that products are differentiated.

There are related serious concerns set out in our response to the Working Paper on Remedy Options for Crematoria.

(f) *Do you agree with the suggested products and services within the proposed "standard" benchmark funeral package (paragraph 60)?*

The LCC is concerned that the CMA has not properly taken into account the range of needs addressed, and ignored cultural and religious differences, as well as the degree of tailoring that takes place in each funeral. In particular, the LCC highlights that demand varies by location, local community, and hence geographic market.

(g) *Are there any funeral director providers for whom the suggested "standard" benchmark funeral package (paragraph 60(e)) would not be a suitable product/service to offer, for example a funeral director offering highly specialised or unique services?*

The LCC considers that there is no such thing as a “standard” funeral.

- (h) *Do you consider that there is evidence to suggest a lower or declining demand for any products/services in the suggested benchmark package, in particular we seek views on the use of limousine/s and embalming (paragraph 47)?*

The LCC draws the CMA’s attention to its comments regarding differentiation of services and increasing demand for less ‘traditional’ funerals in its submission on the CMA’s working paper on Remedy Options for Regulating the Price of Crematoria Services. These indicate that there is reducing demand for standardised products of the type that the CMA is proposing.

- (i) *What is your view on including or excluding time-based restrictions on certain services, for example should collection, transportation of the deceased be available 24 hours a day, seven days a week or should viewing of the deceased at the place of storage/funeral director’s premises be limited to “office hours” such as 8am to 6pm. Also, should there be any restrictions on the route for the funeral procession (paragraph 60(d))?*

The level of intervention suggested by the question is well beyond any reasonable competition issue that has been identified in the case.

- (j) *Do you consider that we should include a requirement for cost reflectivity for all disbursement costs within any price control regulation? If not, are there particular disbursement costs, for example cremation costs, which should be included (paragraph 57)?*

The evidence before the CMA is that prices are not maximised by funeral directors, but instead vary, as do margins. It is also evident from Ipsos Mori that price is not necessarily uppermost in people’s minds. Moreover, the nature of a funeral is something that requires personalisation. A funeral fulfils a purpose in the grieving process which appears to have been totally overlooked or discounted in the CMA’s analysis. Furthermore, there appears to be an assumption that those organising a funeral, who pay the funeral directors, are funding it out of their own income, whereas many funerals will be paid for out of the deceased’s estate.

As a consequence of the above, a period of time to reflect on cost may not make any difference in reality. Such remedies (cooling off periods) might be more appropriate to consumer purchases where the consumer could return the goods. Here, that consideration is unlikely to be either relevant or practical. A funeral is a tailored service that is developed by the bereaved with a funeral director, and the timeframe will be more dependent on cultural factors and other logistical matters such as the availability of the crematorium at a suitable time of day or day of the week, than the time that is available to reflect on the costs of supply.

As for the proposal of capping crematoria pricing and including it in the regulated package, the outcome may be to raise prices in some areas as the price cap will represent the authorised, regulated, and hence approved price. This does not appear to be an intended outcome.

- (k) *Alternatively, do you think that price control cap on average revenue per funeral, would be as effective in addressing any AECs and customer detriment, whilst also addressing unintended market distortions such as the risk of a focal point for prices (paragraph 60(f))?*

The LCC is concerned that the CMA is seeking to impose a price cap remedy at all on the basis of insufficient analysis of local markets, lack of appreciation of demand, and failure to take into account important supply side factors. In particular, the LCC’s experience is of a competitive market, in which a price cap is not necessary. The CMA also has evidence of the diversity of demand and supply by location from internal documents yet seems to be discounting that evidence in favour of assumption that the market needs to be addressed nationally.

- (l) *Do you think the same approach to the design of a price control is required across the UK, or whether there should be any variation at a regional or devolved nation level (paragraph 69(a))?*

The LCC considers that there are variations at regional, and local level which the CMA should fully investigate and that any controls need to be tailored to address the specific competition problem identified. The relevance of political boundaries to customers' needs for funerals would ignore other factors that are important such as religion or culture.

- (m) *Do you think that one maximum price should be set for a benchmark package across the whole of the UK? Alternatively, what are your views on setting different regional or devolved nation prices (paragraph 69(b))?*

The LCC's view is that this would not take into account regional differences in terms of competition and supply side costs, which the CMA should investigate further.

- (n) *What are your views on the interaction of the Burial and Cremation (Scotland) Act 2016 with the proposal of price regulation in the UK (paragraph 74)?*

The LCC does not have a presence in Scotland and so considers it is not well placed to answer this question.

Implementation, monitoring and enforcement

- (o) *What is your assessment of whether the option of setting a maximum price for a benchmark package of products/services (paragraph 60) is capable of effective;*

(i) *implementation?*

(ii) *monitoring?*

(iii) *enforcement?*

The LCC would query whether the setting of a maximum (national) price might have unintended consequences in that funeral directors who are currently pricing at lower levels due to efficiency might price up to the cap, and offer personalisation as a premium product, thus inflating prices.

- (p) *Do you think that compliance reporting requirements to the CMA or a regulator, should be the same for all funeral directors (paragraph 94(b))?*

The LCC considers that only certain funeral directors have consistently raised prices and that it would be disproportionate to impose a price cap remedy on those that have not. It is not clear what these requirements would be so as to comment.

- (q) *Do you have any views or suggestions on designing and implementing an effective communication strategy to ensure that consumers, funeral directors and relevant third parties understand their rights and responsibilities if price regulation is introduced in the funeral industry? In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 94(c))?*

The LCC has indicated its views on actions to improve transparency in the industry in its submissions on the CMA's working paper on Remedy Options for Regulating the Price of Crematoria Services. Customers should be able to book with crematoria unbundling the offer and promoting choice of crematoria. Communication of the same could be an obligation imposed on

all funeral directors as part of their obligations to make the provision of services transparent to customers.

(r) *What preparation would be required and how long do you think funeral directors might require in order to prepare for the implementation of any price control regulation?*

[X]

(s) *What would be the likely costs of implementation, monitoring and enforcement for funeral directors?*

The LCC considers that the costs of implementation of a nationwide price control would far outweigh the customer benefits. The LCC only has detailed information on the cremation segment, but this would suggest that the costs could well outweigh benefits from regulation. This analysis is supplied in the LCC's comments on the Working Paper on Remedy Options for Crematoria.

This analysis shows that CMA has estimated the excess profitability per funeral by the two largest private cremation providers (under the CMA's sensitivity 2 analysis) to be £150-200 per funeral and £100-150 per funeral respectively, whilst the two next largest private providers were not generating excess profits or indeed covering their WACC.

These estimates of potential over charging by the two largest private providers need to be considered in the context of an average total cost for a cremation funeral of £3,744 (essential elements only) plus a further £2000 spent on discretionary items such as flowers or catering. For consumers at affected crematoria, this estimated overcharging amounts to only 2-4% of their total spend. There is no evidence of similar overcharging by private operators outside of the two largest.

We also submit that the CMA requires to conduct a thorough cost benefit analysis of any proposed measures to ensure that they are proportionate to both the scale of actual problem identified and to the likely value of actual benefit to consumers, and that they can be justified on a cost/benefit basis given the considerable additional costs that would be imposed on both the sector as a whole and also on government by the introduction of a national regulatory regime.

(t) *Do you consider an initial duration of five to seven years is an appropriate period for the implementation of a price control remedy and achievement of its aims (paragraph 24)?*

As stated above, the LCC does not consider that a national price control remedy is appropriate or that the CMA has gathered sufficient evidence to implement a price control remedy. In the circumstances LCC considers the duration entirely inappropriate.

(u) *Do you consider there to be other risks or options for mitigation which we have not considered (paragraphs 75-77)?*

The LCC considers that there are significant risks that the imposition of a national price control remedy would have unintended consequences on other levels in the market, and on consumers.

In particular, the LCC considers that these risks are not too great to countenance and any potential remedy should be trialled [X].