

## London Cremation Company

### Submission in response to CMA's Market Investigation Working Paper

### on Remedy Options for Regulating the Price of Crematoria Services

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#### 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 Crematoria Services (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 considers that the CMA has not established a sufficient evidentiary basis of the need for nationwide regulation nor for the imposition of a price cap on a nationwide basis. The LCC potentially sees the case for a more limited cap on the prices of the two leading players in the market but that further intervention would be disproportionate and less effective.
- 1.3. The conditions of demand and supply for cremation services and funeral services, their costs and profits all vary by location. Evidence to support a local geographic market approach is before the CMA from its initial findings showing lower prices where crematoria are closer together, indicating that switching between alternative crematoria is taking place.
- 1.4. Evidence is also available to the CMA from the documents disclosed by the major funeral directors indicating that they price on a regional or local basis. It is also clear from Ipsos Mori research that end customers choose crematoria and are concerned about location, suggesting that the catchment area which should be used should start with exit polls from crematoria, obtaining evidence of where people actually travel from, rather than using hypothetical cortege times and distances from the deceased's home, which is not the starting point for assessing the relevant geographic market.
- 1.5. The LCC notes that the CMA is considering:
  - 1.5.1. which operators a price control remedy could apply to: all crematoria operators or a sub-set. Our current thinking is that it should apply to all operators. **The LCC considers that a subset would be more proportionate and effective, and reduces the risk of unintended consequences.**
  - 1.5.2. the scope of products and services covered by any price control. The CMA considers that crematoria services are a relatively homogenous 'product', and its current thinking is it would identify a commonly purchased combination of cremation services and apply a maximum price to this 'benchmark package'. **The LCC considers that such an approach risks price rises for a "government approved" benchmark package of components and will provide licence for component cost increases. It may be based on a misconception concerning the nature and degree of differentiation of what is involved in a funeral – and this is considered further in the attached submission from the Reverend Dr P Jupp. Furthermore,**

**it is insensitive to the needs of different communities, cultures and beliefs and fundamentally unnecessary.**

1.5.3. setting a cap on the price of a cremation using pricing information from the sector (subsequently updated by reference to an index such as the Consumer Price Index) and setting a cap on the price of a cremation based on crematoria costs and allowing for a 'fair' profit margin. Should a price cap be needed, our current thinking is that basing the initial level of the cap on pricing information from the sector would be an appropriate way forward. [redacted] **does not justify the setting of a nationwide price cap on all suppliers in the industry. We have responded separately to the CMA's Working paper concerning the calculation of profitability, but in brief we have significant concerns about the calculations and whether the methodology is appropriate here – and have made some counter proposals.**

1.5.4. The CMA discusses considerations relating to the benchmarks it could use and how they could be set (for example at national, regional or individual crematoria levels. **The LCC takes the view that more work should be done on the extent and nature of regional competition and that in no circumstances should price caps be imposed on crematoria operating in London where on any analysis the level of competition is the most intense and the level of profitability among the lowest in the country.**

1.5.5. [redacted]

1.5.6. [redacted].

## **2. Specific Comments on the CMA's Approach**

2.1. Regarding price capping, the CMA has indicated that it is considering regional price caps. At this stage the LCC does not consider that a case has been made out of an AEC in the locations in which it operates. The LCC is concerned that essential components of the CMA's analysis to date, such as the return on capital analysis ("ROCE"), are deeply flawed. Please see the LCC's other submissions on the CMA's working papers for detailed submissions on this. As a result of these failings, the CMA does not have a sufficient basis for the imposition of a price control remedy.

2.2. The LCC also considers that the CMA has not fully investigated competition by location. The CMA states that geographic markets are local,<sup>1</sup> but has yet to examine customer requirements, save that the Ipsos Mori research shows that customers choice of crematoria is important to them. The research shows that proximity between crematoria sometimes correlates to observably lower prices, but there is no basis for price capping the entire industry everywhere.<sup>2</sup>

### Local Demand Side Characteristics

2.3. Local communities have different cultures, traditions, and religious beliefs which may be material to their level of price sensitivity. This is not addressed in the Ipsos Mori research because its methodology is nation-wide. However, local crematoria and funeral directors are affected by these local differences. The LCC is based in North London, where it encounters the cultures, traditions, and heritage of different religious groups regularly. Certain communities it encounters take prices into account more than others.

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<sup>1</sup> The Final Report and decision on Reference for a Market Investigation refers repeatedly to "local markets"

<sup>2</sup> Paragraph 27 *et seq.*, *Crematoria: Outcomes*

- 2.4. In particular, in the LCC's experience, the Sikh, Hindu, and Jain communities can be more price sensitive.<sup>3</sup> In contrast, in the LCC's experience, funeral directors are unemotional and detached in their willingness to negotiate on price. Moreover, the LCC has evidence that funeral directors compare prices and will endeavour to influence consumer's choice of cemetery or crematoria, affecting volumes, capacity utilisation, and LCC profitability.
- 2.5. The CMA must gather evidence on this important component of demand. A single nationwide package, however defined, will be inappropriate for a number of religious and minority groups and be unacceptable in certain cultural traditions. 50% of LCC's services are non-religious but cater to a wide variety of groups in their relevant traditions. Differences arise in unexpected areas, e.g. black is unacceptable in Hindu services.

## Catchment Areas and Cortege Speeds

- 2.6. As a starting point for the assessment of catchment areas, the CMA has used 30-minute drive time from crematoria. However, this is based on the recommendations of just a few suppliers.<sup>4</sup> Indeed, the average catchment area for the three largest suppliers was 33 minutes, slightly over the CMA's cut-off.<sup>5</sup> We note that in other cases the CMA gathered explicit poll evidence to establish catchment areas, for example supermarkets.<sup>6</sup> The CMA must gather robust evidence upon which to assess catchment areas, rather than relying on a series of assumptions.
- 2.7. In the LCC's experience, people choose the crematoria and the funeral director location is then considered dependent on a list of factors. Many of the cremations it performs are for funeral directors who have their own refrigeration facilities; drive time should therefore be assessed by reference to exit polls testing the distance people travel as well as the distance from their premises or local mortuaries to the crematoria or cemetery. Moreover, in London the LCC faces competition from other crematoria in a range of locations, including Hendon and Islington local authority cemeteries, and the private cemetery at Kensal Green, among others.
- 2.8. In particular, the Kensal Green cemetery appeared to be chosen by consumers due to a number of factors, including tradition and family connections. Travel time is less relevant to these considerations; communities do not operate the way they once did, bodies are rarely taken from the deceased's home to the crematorium or cemetery, so choice of location and catchment areas measured by distance from the deceased's home is problematic, as is the use of cortege speed, where most consumers will think in terms of normal travel speeds and the level of traffic by time of day.

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<sup>3</sup> As an example of religious preference see also the Sikh Council of the UK's letter to the CMA of 4 February 2019, which notes that the Sikh tradition is to cremate and that "concern has been expressed to us about rising crematorium charges and slot durations."

<sup>4</sup> In the *Crematoria: Outcomes* working paper, the CMA also refers, at paragraph 27 (a), to the "CMA's Market Investigation consumer survey, the CMA's Market Study consumer research, internal documents and commentary from the main private crematoria operators; and planning applications." However, FN 20 states "two-third of customers said the deceased lived within 25 minutes of the crematorium, and four-fifths said the deceased lived within 30 minutes of the crematorium. The survey does not allow us to understand whether this was at normal or cortege drive times." (emphasis added). It is unlikely that the consumers surveyed would refer to cortege speeds, as this is unlikely to be common knowledge; the CMA cannot assume that they meant cortege speed rather than normal driving speed, or even other methods of transport. Moreover, paragraph 4.2.5 of the Market Study Consumer Research referred to in FN 21 states "short journey times (typically 20-30 minutes by car) from the deceased's home to the crematorium and on to a local gathering afterwards were considered to be a benefit" (emphasis added). This makes no reference to cortege speed and cannot be interpreted to mean anything other than normal driving speed. Only, the internal document referred to in FN 22 refers to cortege speed, and even that that the maximum acceptable drive-time is "usually 30 minutes", implying that this may be higher in some cases. Moreover, none of the evidence cited by the CMA is indicative of a maximum willingness to travel; it may be that the average drive time is 33 minutes simply because there are a number of suppliers across the UK and typically users are able to choose a supplier within this proximity, but consumers may be willing to travel further than this, for example for a better or more tailored service. The CMA has not collected evidence on this.

<sup>5</sup> Paragraph 27(a) and FN 19, *Crematoria: Outcomes*

<sup>6</sup> Please see the LCC's submissions on geographic market definition for more detail.

## Local or Regional Pricing by Supplier

- 2.9. Moreover, the CMA has found, in relation to crematoria in particular, that prices vary in areas with more crematoria in close proximity to each other.<sup>7</sup> However, the CMA has not fully investigated local or regional pricing by supplier. The CMA must gather evidence on this. Please see the LCC's submissions on the CMA's working paper in relation to funeral director pricing for further detail.

### **3. LCC Observations on the CMA's Aims and Approach to Price Control Remedy Options**

- 3.1. The LCC understands that, should the CMA find AEC(s), and resultant detrimental effects on consumers of crematoria services, the primary aim of a price control remedy to address any potential excessive pricing would be to provide either, or both:

(a) *“an initial intervention to ‘reset’ the prices of more expensive operators to closer to competitive levels; and*

(b) *an ongoing restriction on price increases, so that prices remain closer to a competitive level.”<sup>8</sup>*

- 3.2. We accept and agree that the prices of more expensive operators could be reset and a relevant benchmark could be the pricing of prepaid funeral plans. The more expensive operators would then be required not to discriminate.

- 3.3. We note that the Working Paper refers to cost orientation and rate of return allowances, and the pre-disposition displayed in the ROCE working paper.<sup>9</sup> The LCC repeats its concerns about the ROCE in its submission on the Cost of Capital Analysis working paper.<sup>10</sup> In addition, the LCC highlights the following concerns:

(a) The ROCE calculations applied to the LCC were themselves based on inappropriate benchmarks and are therefore misleading. This is particularly the case in relation to land values.

(b) The CMA has written off the value of the LCC's historic Grade II listed buildings. However, these buildings are valuable in attracting consumers and enhance the LCC's offerings as venues for funerals, and reputation. The Ipsos Mori evidence indicates that 82% of consumers choose funerals based on personal experience or recommendations. These buildings are an integral part of the proposition and the place of the performance of the funeral service for the LCC. Treating them as of nil value in assessing reasonable profitability creates a misleading indication of economic profit which bears no relation to the LCC's reality. This exaggerates the CMA's estimates of economic profit for all operators of older crematoria, which is the majority of operators.

(c) There are known pitfalls in using ROCE to calculate price caps, in particular 'gold-plating' or over-investment to achieve acceptable levels of return within a price cap.

(d) The LCC has submitted to the CMA that its value should be looked at as a whole, as crematoria land is difficult to disaggregate and would be difficult to use for other purposes.<sup>11</sup>

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<sup>7</sup> Paragraph 27 *et seq.*, *Crematoria: Outcomes*

<sup>8</sup> Paragraph 29, *Working Paper*

<sup>9</sup> Paragraphs 29-37, *Working Paper*

<sup>10</sup> See, in particular, paragraph 3.12 of that submission

<sup>11</sup> See LCC Submission dated 18 December 2019

- (e) Any safeguard caps, should they be necessary, should be assessed [3<]. The CMA's work has not identified any evidence beyond those two players that would suggest other private providers are generating excess profits. Consequently, safeguard caps are not justified for the industry as a whole on the basis of the CMA's current evidence.
- (f) The CMA refers to essential services, or a specific package. The LCC provides direct cremation, the use of which is increasing. This offer is effectively a basic service and could be defined as the core essential service which is already available. If extreme care is not taken, all that will happen is that the direct cremation will be priced at the regulated price and the price of direct cremation could increase.
- (g) The CMA defining an essential service or "package" may undermine the offering of the full and more personalised funeral service, as is normally the case being defined to meet the needs of individual consumers and families. The LCC queries the assumptions upon which the CMA appears to be relying. A funeral fulfils a symbolic and cathartic function, which requires respect and deference to the requirements of the individuals themselves, their culture, traditions, and religion. That differentiated services are in the market is likely to be an outcome of the supply of services to meet a particular demand or need.<sup>12</sup>
- (h) To impose a price cap on a specific package is based on the assumption that the Funeral product is undifferentiated and a simple "product". This is like asserting that a wedding service is a simple product. A funeral service will meet the diverse needs of many different consumers in many different ways. If, in fact, that package is tailored or personalised to meet a particular need, the imposition of a standardised package will undermine that feature of the current offerings and substitute the CMA's view of end user needs for actual end user needs. It would, in effect become a state mandated funeral service. One issue may be how it would be marketed; as a standardised basic package, it may be presented as the base level, providing a price point which the market uses to justify higher prices for other services.
- (i) Moreover, depending on the price cap chosen, suppliers will see a benefit in increasing prices for components. Alternatively, if they are operating below the price cap, they are likely to increase prices to the level of the cap (e.g. telecoms, energy, university fees). Given the wide variety of Funeral Director offerings there is huge scope for price increases. This is major downside of the proposal and is likely to lead to considerable consumer detriment.

3.4. We note, in particular, the CMA's statement that the proposal to base "*the initial level of the cap on pricing information from sector (on a national level) would be an appropriate way forward for any price cap initially set by the CMA.*"<sup>13</sup> The LCC disagrees with this approach; any price cap should be identified by reference to a proper analysis of local pricing and different costs by region or location – it will otherwise become a price cap that leads to price increases for parts of the country that are below the cap level. Treating similar customers in different parts of the UK in such a way is clearly wholly disproportionate and unfair.

3.5. The CMA has also concluded that:

*"a price-based approach would help to address quickly the detriment observed in terms of the prices charged to customers and would be a practical solution which could be more easily implemented than a cost-based approach."*<sup>14</sup>

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<sup>12</sup> See Further Submission from the Rev Dr P Jupp.

<sup>13</sup> Paragraph 36, *Working Paper*

<sup>14</sup> Paragraph 36, *Working Paper*

3.6. The detriment to consumers depends on the supplier they have used. As shown below, Dignity and Westerleigh are disproportionately represented in the highest charging locations.

3.7. The table below provides the pricing and ownership information for all crematoria charging £950 or more based on Pharos 2019 pricing information:

- 26 of the top 37 are owned by Dignity / CMG (=also Dignity)
- 6 are owned by Westerleigh but only appear from position 27 onwards (£975)
- 2 are owned by LAs
- 2 are owned by independent operators
- 1 is owned by Memoria

Position	Owner	Price
1	Dignity	1070
2	Dignity	1070
3	Dignity	1070
4	Dignity	1070
5	Park Grove Crematorium Ltd (independent)	1070
6	Dignity	1070
7	Dignity	1070
8	Dignity	1070
9	Dignity	1070
10	Dignity	1070
11	Dignity	1060
12	Dignity	1060
13	Dignity	1055
14	Dignity	1035
15	Dignity	1025
16	Dignity	999
17	Dignity	999
18	Dignity	999
19	Dignity	999
20	Dignity	999

21	Memoria	990
22	Dignity	990
23	Dignity	980
24	Austin's Funeral Directors	980
25	Local Authority	975
26	Dignity	975
27	Westerleigh	975
28	Westerleigh	975
29	Westerleigh	970
30	Dignity	965
31	Westerleigh	965
32	Dignity	960
33	LA	959
34	Westerleigh	955
35	Westerleigh	950
36	Dignity	950
37	Dignity	950

3.8. The CMA finds that:

*“this could also include consideration of limited exceptions (for example for new entrants or for crematoria in areas with high land values).”<sup>15</sup>*

3.9. The LCC welcomes the recognition that high land values provide a basis for a limited exception – we see the force of that for London and have provided detailed comments in our response to the Working Paper on cost of capital and crematoria profitability. The fact that land values vary by location is not and should not be surprising. The fact that land values vary by location is not new. Because land values vary and are essential in calculating normal profitability, calculations of excessive profitability can be distorted by major differences in land values and the level of land values. The CMA has sought to address the underlying problem in the application of “sensitivities” to the calculation of profit. However, land values in high value locations such as London are not properly addressed. In recognition of this, and the difficulty of reasonably identifying an alternative modern equivalent asset value for a particular piece of land, we suggest that certain urban areas and London in particular are excluded from any national cap or regulation. Moreover, there is evidence of competition related to proximity of alternative suppliers and prices are lower in London than elsewhere.

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<sup>15</sup> Paragraph 36, *Working Paper*

- 3.10. The usefulness of the profit analysis is in principle to provide a basis for inferring a lack of a competitive market and informing the setting of a price cap. If there is alternative evidence that the market is competitive (e.g. switching in some locations), it is dangerous to conclude that the market is uncompetitive based on oversimplified land values.
- 3.11. Recognising these issues, it would in the LCC's view be unreasonable to impose a single nationwide price cap. Some players will benefit, and some will lose, from higher and lower profit levels being allowed by the cap in a way that is not merited by any business activity and which is inherently disproportionate.
- 3.12. The major players with multiple sites are likely to see some degree of averaging across their estates while smaller players with fewer or even single locations will be disproportionately affected whether favourably or unfavourably. Some may be able to put their prices up; others may be forced out of business. The CMA has not done the work to allow it to understand the likely impact of price caps across c. 250 suppliers.
- 3.13. The CMA goes on to state that:

*"If the monitoring and enforcement, as well as the setting of future price controls were to transition to a sector regulator, it may be appropriate to move from basing this on pricing data to basing it on cost data in due course. This would be for any future regulator to assess and decide upon."*<sup>16</sup>

- 3.14. We recognise that setting price controls based on evidence of lack of competition and increased prices over time would be inappropriate for the entire industry but [§]. On a cost benefit basis nationwide regulation is clearly unnecessary.

#### **4. Key Design Considerations: Pre-conceptions, Rites, Rituals, and Commodity Products**<sup>17</sup>

- 4.1. The CMA recognises that remedies which control outcomes, such as price controls, must *"specify the products or services that are subject to control and the basis for the level of price that is set."*<sup>18</sup>
- 4.2. The LCC's initial observation is that the CMA is grappling with the issue that the 'product' involves an individual experience. In practice the bereaved and their families may have considerable input into what is being done in the course of a service. Funeral directors may make suggestions, but they do not provide a pre-defined product.
- 4.3. In many cases, the bereaved define the content of the service as appropriate to their friends, families, cultures and beliefs. Some may want a colourful and joyful celebration of the deceased's life.<sup>19</sup> We understand this to be a significant proportion of consumers. Some may want a different, more respectful tone, in a more solemn style.
- 4.4. The presence of clergy or a celebrant will vary, and the role the crematoria plays in the process will vary depending on requirements, culture, and religion. The CMA should consider very carefully the definition of a standard package, in light of these differences. Customs for funerals vary widely across different communities. For example, many consider that black should be worn for funerals, but to do so at a Hindu funeral is considered disrespectful.<sup>20</sup> Moreover, typically at a Hindu funeral, the body will remain at home until cremation, which usually occurs 24 hours after death. At the service, mourners dress

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<sup>16</sup> Paragraph 36, *Working Paper*

<sup>17</sup> See further the submission from the Dr Rev P Jupp

<sup>18</sup> Paragraph 38, *Working Paper*

<sup>19</sup> See for example <https://metro.co.uk/2017/05/08/would-you-want-a-themed-funeral-after-you-die-6622359/>

<sup>20</sup> <https://www.funeralwise.com/customs/hindu/>



casually, usually in white. An open casket will usually be present, and the ceremony will be conducted by a Hindu 'karta' or senior members of the family. It is not clear how a standard package would provide for this. The CMA should be mindful of the range of customs present in the UK.

- 4.5. Moreover, in the last three years, Co-op has seen an increase in requests for unique hearses by a fifth (21%). One in five of those surveyed by the Co-op want mourners to wear bright colours to their funeral.<sup>21</sup> This highlights a growing move away from more 'traditional' funerals.<sup>22</sup>
- 4.6. The LCC's experience is that the consumer arranging a funeral is often an individual delegated to by the family, and that the family have considerable input. As a result, the 'product' is far from a commodity product. The CMA does not need to intervene in the personalisation of funerals and to do so would be deeply unpopular and unwelcome – and is simply unnecessary.

## **5. Key Design Considerations: Benchmark Package and Risks Involved in Price Capping**

- 5.1. As discussed above, the idea of a standardised benchmark package is a challenge for the LCC in light of the diverse areas in which it operates and their local communities and customs.
- 5.2. The LCC suggests that the following issues, identified in the CMA guidelines, must be taken into account, and suggest significant difficulties in the use of a benchmark package for the setting of a price cap.

### Specification Risk

- 5.3. Remedies which control outcomes should specify in significant detail the products or services that are subject to control, and the basis of control. In particular, in reference to price caps based on benchmark products, the approach may greatly simplify monitoring and compliance *"but is only likely to be effective if a few key products are likely to continue to account for a large proportion of sales."*<sup>23</sup>
- 5.4. The remedy should also specify how the price control will deal with changes, such as the introduction of new products. This may be particularly difficult in a sector where services are often differentiated, as here, on an individual basis.

### Feasibility of Effective Competition

- 5.5. Measures which control outcomes are often used in regulated sectors, where it may not be feasible to introduce effective competition.
- 5.6. Services such as water, gas, energy, and, to an extent, telecoms, are capable of definition as commodity and utility products, and are regulated according to carefully defined product specifications. Funerals are not commodities.
- 5.7. The introduction of such measures are potential outcomes of market investigations, particularly where it is not possible to identify effective ways of addressing the causes of the

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<sup>21</sup> [https://www.huffingtonpost.co.uk/entry/more-people-having-quirky-funerals\\_uk\\_5c45a3f2e4b027c3bbc376a7?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAADl5TTVYbwWueUI23w7rQu14iXj67xW6yDsuTFyswNkqLkF0SnPhJ6ZiNiLMHcbOmXqInCONc6db0Jq3D0yRPLlevJWibfg-d5MYRc-sLzceKY8ZJ0\\_-7p0wGNb47FLqZ\\_j4nEm0\\_S9\\_cE1X1BdPTKEbR-h7CPI1JmH2Lb-TF4\\_](https://www.huffingtonpost.co.uk/entry/more-people-having-quirky-funerals_uk_5c45a3f2e4b027c3bbc376a7?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAADl5TTVYbwWueUI23w7rQu14iXj67xW6yDsuTFyswNkqLkF0SnPhJ6ZiNiLMHcbOmXqInCONc6db0Jq3D0yRPLlevJWibfg-d5MYRc-sLzceKY8ZJ0_-7p0wGNb47FLqZ_j4nEm0_S9_cE1X1BdPTKEbR-h7CPI1JmH2Lb-TF4_)

<sup>22</sup> [https://assets.ctfassets.net/5ywmq66472jr/2GNFr85RmCks8Q62qse8l/2a20cd997dc0ff1fdc603ad402e4314c/WR\\_B\\_834\\_PR\\_Funeralcare\\_Report\\_v13b.pdf](https://assets.ctfassets.net/5ywmq66472jr/2GNFr85RmCks8Q62qse8l/2a20cd997dc0ff1fdc603ad402e4314c/WR_B_834_PR_Funeralcare_Report_v13b.pdf)

<sup>23</sup> Paragraph 91(c), CC3

AEC(s), or where competition-enhancing measures are likely to take a long time to remove the consumer detriment.

- 5.8. The LCC observes that offering cremation prices and contracting directly between crematoria and end consumers is something which can and should be mandated as part of the proposal for increased transparency. This approach would increase competitive pressure, and remove one aspect of the CMA's concern.

## Defining Appropriate Parameters for the Control Measure

- 5.9. The setting of price caps may be "complex and, in some cases impractical."<sup>24</sup> We draw, in particular, the CMA's attention to the following paragraphs of its guidance (emphasis added):
- (i) *"Pricing in the relevant market is naturally volatile, for example because of variability in input costs. (Here prices vary throughout the country with relation to both prices and costs)*
  - (ii) *Products or services are differentiated rather than homogeneous; this may increase the complexity of any control in order to capture adequately the diversity of products offer. (This is the case here)*
  - (iii) *Prices are individually negotiated, which may also increase the complexity of any control measure. (This is the case here)*
  - (iv) *Supply arrangements and products are subject to significant ongoing change, which require the control measure to change to reflect new developments. (The large number of consumer practices, customs, communities, religions, tastes and the wide variety of funeral director suppliers and the function and settings of crematoria means that change has taken place as described above and is very likely in the future).*
- (b) *This class of remedy directly overrides market signals with the result that it may generate distortion risks over time that increase the effective cost of the remedy or reduce its effectiveness. For example, a supply commitment for a particular product may discourage product innovation.*<sup>25</sup>  
*(here the idea of a state mandated package is antithetical to the innovation and current nature and functioning of funeral markets).*

- 5.10. The guidance goes on to state that in "view of these risks, the CC will not generally use remedies that control outcomes unless other, more effective, remedies are not feasible or appropriate."<sup>26</sup> (As we have set out elsewhere other remedies are not only feasible but are more appropriate workable and likely to be effective.) In this scenario, the LCC considers that other remedies are clearly more feasible and appropriate.

## **6. The Providers Subject to Price Regulation**

- 6.1. The CMA should only consider the use of a price cap to remedy a situation of excessive pricing or excessive profitability. The CMA has not made out its case that either is present in the sector as a whole. [§<]. At present, the LCC considers that the CMA has gathered insufficient evidence, and risks imposing a disproportionate and unnecessary intervention.

## **7. Demand and Supply Side Factors Affecting the Scope of Any AEC Findings**

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<sup>24</sup> Paragraph 88(a), CC3

<sup>25</sup> Paragraph 88, CC3

<sup>26</sup> Paragraph 89, CC3

- 7.1. The CMA states that it has “*considered the potential impact of demand-side factors.*”<sup>27</sup>
- 7.2. The LCC submits that those demand side factors cannot have been fully and properly taken into account because the CMA is ignoring important cultural and religious differences by location in its proposed remedies. This is because demand has not been properly analysed. Demand side factors which should be taken into account are set out earlier.
- 7.3. The CMA has also failed to gather evidence of how far consumers actually travel for funerals, and so cannot properly define a geographic boundary for catchment areas. If it did, it is likely the CMA would find different areas to be more or less competitive.

## **8. Market Outcomes: Prices and Profitability**

- 8.1. The CMA asserts that the characteristics of the sector “*have allowed crematoria operators to set prices above the competitive level and to increase prices over the period of our analysis could remain in future.*”<sup>28</sup> [3<].
- 8.2. The LCC strongly disagrees with the CMA’s approach, as a full and proper analysis has not been undertaken, and the CMA’s conclusions represent a failure to investigate the facts and understand the true level of competition and profitability in the sector.

## **9. Scope of Products and Services Covered by Price Regulation**

- 9.1. The CMA indicates it is seeking to provide a “*remedy focused on a package of cremation products and services*” which “*is likely to be more practical to implement, monitor and enforce and to be a more proportionate approach.*”<sup>29</sup>
- 9.2. It appears, therefore, that the CMA seeks to define the cremation as a component of a funeral, a homogeneous commodity, and price cap that component. The LCC disagrees that a cremation can be considered as such.
- 9.3. There are considerable risks in the implementation of a price cap where one is not warranted:
  - (a) The pre-supposition that the cap applies to some sort of standardised product will impact personalisation and consumer welfare-enhancing innovation which is currently present in the market.
  - (b) The lack of assessment of impact on locality overlooks that different cultures and religions may have different requirements.
  - (c) Specification risks, which are discussed above.
  - (d) The imposition of a price cap risks creating severe distortions in the market, including the perverse outcome that those efficient providers which currently price below the price cap would increase their prices to the price cap.
  - (e) The impact of innovation, differentiation, and entry must be considered.
- 9.4. The LCC reserves its position on the questions raised in paragraphs 48 to 74 of the Working Paper, as the rationale behind the imposition of any nationwide price cap at all is deeply flawed.

## **10. Geographic Scope**

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<sup>27</sup> Paragraph 43, *Working Paper*

<sup>28</sup> Paragraph 45, *Working Paper*

<sup>29</sup> Paragraph 48, *Working Paper*

10.1. The LCC's view is that geographic market definition is an important component which the CMA has not properly carried out. As such, the finding of AECs is problematic, along with the consequent imposition of a price cap remedy.

10.2. The CMA appears to concede that different geographic markets may exist:

*"The cap could be a uniform national cap or could allow for differences or uplifts to take into account regional differences in land or operational costs (for example, a separate cap for London or one or more of the nations)."*<sup>30</sup>

10.3. It is clear there are local differences in offerings – the Funeral Directors Working Papers reveal internal documents from Funeral Directors concerning regional pricing. Demand and supply costs vary by location. The CMA has recognised that differences exist but the enquiry cannot end there- the CMA must properly gather evidence and take it into account relevant considerations and not take into account irrelevant considerations in the assessment of whether AECs are present, and, only if any are present, then assess what remedies should be imposed.

10.4. Moreover, if the CMA imposes an inappropriate geographic market boundary, this will make the task of assessing the efficacy of a remedy, compliance therewith, and enforcement more difficult.

10.5. The LCC urges the CMA, in particular, to gather evidence on:

- (a) those attending crematoria, via exit poll, to assess the distance of actual crematoria catchment areas; and
- (b) price and quality factors from funeral directors in relation to choices of location or crematoria, and their effect on crematoria pricing.
- (c) Demand preferences differ with relation to local community and religious differences. The LCC sees the idea of regional political boundaries as wholly inappropriate - a political administrative region should not be confused with factors that would represent different consumer demands by location. For example, those with similar religions may live close to one another and affect local demand. The Hindu community may have different requirements than others – wherever a religious group may live in the UK and rather than making assumptions about the similar needs of religious groups in Northern Ireland, demand should be tested against the evidence of need by location. Treating all end customers that reside in a particular place in accordance with administrative or political boundaries ignores important cultural and religious differences and is wholly inappropriate.

## **11. Determination of a Maximum Price**

11.1. The LCC reserves its position on the questions raised by the CMA in paragraph 78 of its Working Paper, in light of the flawed nature of the rationale for the imposition of a price cap.

11.2. We note that the CMA considers the possibility of making an allowance for higher cost areas "*such as London*",<sup>31</sup> indicating that the CMA accepts that London represents a higher cost area in the sense that land values are higher in London than many other parts of the UK. The LCC is of the view that there are in fact very good reasons not to impose a price cap on London, as a separately defined geographic area, rather than apply a national cap subject to an exception. The CMA has not demonstrated that operators in London, such as the LCC,

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<sup>30</sup> Paragraph 74,

<sup>31</sup> Paragraph 78(b), *Working Paper*

are making excessive returns as can be seen in our analysis provided in response to the Working Paper on Crematoria Profitability.

- 11.3. Thus, for the above and other reasons expressed in response to other working papers, the LCC submits, the CMA position that a price cap is appropriate for the entirety of all crematoria in the UK is not soundly based.

## **12. Interactions with Funeral Director Services Price Control Remedy**

- 12.1. Funerals are not a commodity product which is readily suited to a price cap.
- 12.2. Funeral directors have an interest in reducing the crematoria fee and maximising their revenue from a total bill. The LCC understands that crematoria which are closer to each other experience more shopping around by funeral directors and offer lower prices.
- 12.3. The purpose of a price cap imposed on funeral directors would be to remedy excessive returns at that level of the market. There is a serious risk that this would not be achieved in practice. Please see our further comments on the impracticality of imposing a price cap on funeral directors in response to the working paper on price caps for funeral directors. Moreover, local differences need to be taken into account.

## **13. Benchmark Package Pricing and Pass Through**

- 13.1. The CMA indicates it will include a requirement that the cost of the benchmark cremation package be passed through to consumers at the price charged by the crematorium in any funeral package price.
- 13.2. The LCC suggests that crematoria pricing should be transparent and published, allowing consumers to book directly with a crematoria prior to appointing a funeral director and contract if desired, and with a transparency obligation applicable to funeral directors. This approach would ensure that crematoria prices are passed through to consumers. This would help the CMA avoid the unintended consequences identified above.<sup>32</sup>

## **14. Further Questions and Request for a Meeting**

- 14.1. The LCC reserves its position in relation to the CMA's further questions in the Working Paper.
- 14.2. Given the LCC's position the LCC would be grateful for an opportunity to discuss a way forward with the CMA, before making any further comments.

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<sup>32</sup> Paragraph 83(a)-(d) and Paragraph 84, *Working Paper*