

**FUNERAL DIRECTORS AND CREMATORIA SERVICES MARKET INVESTIGATION:  
RESPONSES TO THE CMA'S WORKING PAPERS PUBLISHED ON  
20 AND 21 FEBRUARY 2020**

The Midcounties Co-operative Limited ("**Midcounties**") welcomes the extension to the CMA's timetable for the current market investigation, and the opportunity to respond to the CMA's working papers published on 20 and 21 February 2020 (the "**Further Working Papers**").

The following responses to the Further Working Papers are without prejudice to Midcounties' engagement with (i) any subsequent publications by the CMA in connection with the current market investigation; and/or (ii) the final outcome of the CMA's assessment on whether there are any AECs in relation to the services provided by funeral directors and crematoria operators, and any detrimental effects on customers resulting from those AECs.

**1 EXECUTIVE SUMMARY**

**Introduction of a price control remedy for funeral directors:**

1.1 For the reasons outlined within the responses in **section 2**:

- (a) we believe that the introduction of a price control remedy for funeral directors is very likely to result in significant unintended distortions to outcomes within the market, with customers adversely affected as a consequence;
- (b) we do not consider that the introduction of a price control remedy for funeral directors is likely to be effective in remedying any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation);
- (c) we consider that certain of the possible information and transparency remedies outlined by the CMA's working paper "Information and Transparency Remedies", published on 30 January 2020, would provide:
  - (i) a more effective and less onerous means by which to remedy any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation); and
  - (ii) a materially lower risk of significant unintended distortions to outcomes within the market compared to the imposition of a price control remedy upon funeral directors (e.g. in relation to a benchmark funeral package); and
- (d) we therefore do not consider that the introduction of a price control remedy for funeral directors would be a necessary and proportionate solution in the context of this market investigation.



### **Introduction of a price control remedy for crematoria operators**

- 1.2 For the reasons outlined within the responses in **section 3**, on the basis that crematoria operators generally have fewer (if any) local competitors compared to funeral directors, we believe that:
- (a) information and transparency remedies are less likely to remedy any AECs in relation to crematoria services, and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation); and
  - (b) the introduction of a price control remedy for crematoria operators set at a regional level could provide an effective remedy.

### **Introduction of a local authority tendering remedy**

- 1.3 For the reasons outlined within the responses in **section 4**, we believe that a CMA recommendation to local authorities ("**LAs**") would be more effective and proportionate than either (i) a CMA Order to LAs, or (ii) a CMA recommendation to central government(s).
- 1.4 This is primarily on the basis that each LA would be able to respond to the recommendation as it considered most appropriate, having regard to aspects including:
- (a) existing competition within the LA;
  - (b) customer demand for such a scheme within the LA;
  - (c) the LA's own available resources and budget to use in connection with the scheme; and
  - (d) the structure of the tender process, and the outcomes that this seeks to deliver, having regard to customer demand and demographics within the LA.

## **2 FURTHER WORKING PAPER: REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED**

### **Aims and approach of a price control remedy**

- 2.1 **Paragraph 101(a): Do you agree that the introduction of a price control is 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?**
- 2.2 We disagree. We believe that the introduction of a price control remedy for funeral directors is very likely to result in significant unintended distortions to outcomes within the market, with customers adversely affected as a consequence.
- 2.3 We consider that these significant unintended distortions would include:

- (a) certain funeral directors seeking to "upsell" personalised funeral packages, so that a price cap would not apply to such sales, even if these personalised packages were not obviously best suited to customers' requirements;
- (b) a reduction in price competition between funeral directors, given that:
  - (i) the introduction of a price cap for a benchmark funeral package may be expected to result in funeral directors pricing at or around the level of the cap, rather than significantly below the cap; and
  - (ii) in the context of a personalised funeral package, any price cap for a benchmark funeral package risks becoming a de facto price "floor", with the costs of personalised products and services chosen by customers simply being added to the price cap for the benchmark funeral package;
- (c) a reduction in quality (and competition on quality), particularly in the context of a predominantly outcomes-based regulatory model,<sup>1</sup> under which funeral directors are likely to have a greater ability to reduce the quality of their services (or otherwise not improve the quality of their services), while remaining compliant with the overall outcomes promoted by the regulatory model; and
- (d) a reduction in the number of competitors and the range of viable business models, on the basis that, if set too low, a price cap would result in exit, and/or increased barriers to entry and/or expansion.

2.4 In this latter context, we note that the CMA is presently giving further consideration to the information required in order to determine the level of any initial price control, so as to seek to ensure that this does not lessen competition by prompting exit, and/or hindering entry, and/or expansion.

2.5 Notwithstanding that we do not agree that the introduction of a price control remedy for funeral directors would be an effective solution in the context of the current market investigation, in the event that the CMA is minded to give further consideration to the appropriate level of any initial price control remedy, we believe that the CMA must necessarily take into account:

- (a) the additional costs of compliance that funeral directors may be expected to face following the conclusion of this market investigation (e.g. as a result of the implementation of a possible package of remedies);
- (b) the need for any initial price control remedy to enable funeral directors to cover the totality of these additional costs of compliance in the context of their overall costs, while earning a reasonable profit upon the products and services that they provide; and

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<sup>1</sup> As contemplated by the CMA within its working paper "Quality regulation remedies", paragraphs 81 – 82, published on 30 January 2020.

- (c) in this context, informed feedback from relevant market participants from across the UK in relation to an acceptable level for any initial price control remedy that the CMA may consider, so as to seek to avoid an outcome whereby competition is reduced as a consequence of exit, and/or increased barriers to entry and/or expansion.
- 2.6 **Paragraph 101(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?**
- 2.7 We disagree. We do not believe that a price control remedy for funeral directors would be effective in achieving its aim (i.e. to remedy any AECs and any resultant, or expected, detrimental effects on customers, should they be found in this market investigation).
- 2.8 Instead, as outlined above, we consider that a price control remedy is very likely to result in significant unintended distortions to outcomes within the market, with customers adversely affected as a consequence.
- 2.9 In this context, we note in particular the risk that the introduction of a price control remedy for funeral directors drives certain unwelcome behaviours aimed at avoiding the application of a price cap (including, for example, efforts to "upsell" personalised funeral packages). We consider that it would be very difficult to police effectively these types of behaviours.
- 2.10 We also consider that a price control remedy risks reducing the number of competing funeral directors, as well as the range of viable business models, on the basis that, if set too low, a price cap would result in exit, and/or increased barriers to entry and/or expansion. If a price control remedy was to result in such an outcome (i.e. the loss of actual and potential competition) this would be a disadvantage that must properly be viewed as being disproportionate to the aim of the remedy.
- 2.11 Moreover, having regard to the possible information and transparency remedies outlined by the CMA in its working paper published on 30 January 2020,<sup>2</sup> we consider that certain of these remedies that could apply to funeral directors would provide:
- (a) a more effective and less onerous means by which to remedy any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation); and
  - (b) a materially lower risk of significant unintended distortions to outcomes within the market compared to the imposition of a price cap upon funeral directors (e.g. in relation to a benchmark funeral package).
- 2.12 In the circumstances, we do not consider that the introduction of a price control remedy for funeral directors can be regarded as a necessary and proportionate solution to remedy

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<sup>2</sup> CMA working paper "Information and Transparency Remedies", published on 30 January 2020.

any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation).

### **Price control design considerations**

2.13 **Paragraph 101(c): Do you agree that all funeral directors should be subject to a price control remedy (paragraph 38)?**

2.14 For the reasons outlined above:

- (a) we believe that the introduction of a price control remedy for funeral directors is very likely to result in significant unintended distortions to outcomes within the market, with customers adversely affected as a consequence;
- (b) we do not consider that the introduction of a price control remedy for funeral directors is likely to be effective in remedying any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation);
- (c) we consider that certain of the possible information and transparency remedies outlined by the CMA in its working paper published on 30 January 2020<sup>3</sup> would provide:
  - (i) a more effective and less onerous means by which to remedy any AECs and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation); and
  - (ii) a materially lower risk of significant unintended distortions to outcomes within the market compared to the imposition of a price cap upon funeral directors (e.g. in relation to a benchmark funeral package); and
- (d) we therefore do not consider that the introduction of a price control remedy for funeral directors is a necessary and proportionate solution in the context of this market investigation.

2.15 However, notwithstanding our position, in the event that CMA is minded to give further consideration to a price control remedy, we believe that all funeral directors offering funeral packages should be subject to this remedy.

2.16 **Paragraph 101(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)?**

2.17 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

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<sup>3</sup> CMA working paper "Information and Transparency Remedies", published on 30 January 2020.

- 2.18 However, in the event that the CMA is minded to give further consideration to a price control remedy, we believe that all funeral directors should be subject to this remedy.
- 2.19 In this context, we believe that any criteria for exemption would risk being applied creatively by funeral directors, so as to seek to circumvent a price cap. Accordingly, we do not consider that certain funeral directors should be exempt from a price control remedy.
- 2.20 **Paragraph 101(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)?**
- 2.21 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.22 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we believe that the application of a price cap to a benchmark funeral package of products and services would be preferable to applying a maximum level of revenue per funeral based upon average revenue, due to:
- (a) the possible variances to "average revenue" that may be driven by factors outside of the control of funeral directors; and
  - (b) the complexity of applying an "average revenue" approach.
- 2.23 **Paragraph 101(f): Do you agree with the suggested products and services within the proposed "standard" benchmark funeral package (paragraph 60)?**
- 2.24 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.25 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we believe that any suggested benchmark funeral package should:
- (a) include those elements that are objectively necessary to enable the cremation or burial of the deceased, with a level of quality and service that would be acceptable to the majority of customers;
  - (b) require that customers have the option to personalise the funeral by adding specific products and/or services, and require that funeral directors provide customers with the specific cost associated with each additional product or service in advance; and
  - (c) require funeral directors to provide customers with specific details of the costs of local disbursements required in connection with a funeral, including for example:
    - (i) a full breakdown of fees charged by each local crematorium;
    - (ii) a full breakdown of fees charged by each local cemetery; and

(iii) a full breakdown of applicable medical fees,

including publicising "worked examples" of the overall costs of different types of funerals locally, as appropriate.

- 2.26 We believe that this framework, and the increased transparency in relation to prices and options, would ensure that customers had greater clarity with regard to:
- (a) the options available to them when choosing a funeral (including in relation to choices of local crematoria, where relevant, and associated disbursements); and
  - (b) the expected maximum overall price of their chosen funeral, including local disbursements.
- 2.27 With this in mind, we believe that care should be taken to ensure that a benchmark funeral package excludes products and services that are not objectively necessary to enable the cremation or burial of the deceased.
- 2.28 In this context, we consider that if a benchmark funeral package includes a number of "non-essential" elements, then the inclusion of these elements within the package risks:
- (a) creating the impression that these elements are in fact necessary for a cremation or burial (particularly if customers view the benchmark funeral package as being implicitly endorsed or approved "by the government"), such that the benchmark funeral package becomes viewed as the "norm";
  - (b) certain customers purchasing products and services solely because of their inclusion within the benchmark funeral package, when the same customers would not have purchased these products and services separately if they had been excluded from the package; and
  - (c) certain customers spending more on additional non-essential products and services, so as to seek to differentiate their funerals from the "norm".
- 2.29 If the "non-essential" elements were removed from the benchmark funeral package, customers would then be able to exercise a greater degree of choice in order to personalise funerals by adding specific products and/or services (with customers being fully informed in advance of the specific cost associated with each additional product and/or service).

### **Revisions to the benchmark funeral package set out within Table 1**

- 2.30 In light of this, we believe that the following revisions should be made to the suggested elements of a benchmark funeral package set out within Table 1:
- (a) **Collection and transportation of the deceased:** we believe that this should be time-limited to the hours of 8am – 6pm, on the basis that the majority of deaths do not occur "out of hours" in the community, but rather occur within a range of institutions, and it would therefore not be appropriate for customers to purchase a 24-hour service "as standard". In any event, we understand that the CMA is

considering the possible imposition of a cap on the collection, transportation, and storage of the deceased.<sup>4</sup> In the event that such a price cap is imposed, we assume that this would also be applicable to the collection and transportation elements of a benchmark funeral package (if this was to be introduced).

- (b) **Storage of the deceased:** we consider that for the purpose of calculating a price cap for a benchmark funeral package, storage should be limited to a period of 48 hours. As noted above, we understand that the CMA is considering the possible imposition of a price cap on the collection, transportation, and storage of the deceased.<sup>5</sup> In the event that such a cap is imposed, we assume that this would also be applicable to the storage element of a benchmark funeral package (if this was to be introduced).
- (c) **Provision of a 'standard' coffin:** given the range of coffins that more than 3,000 funeral directors may consider to be 'standard', we believe that a more detailed description of the specification of a 'standard' coffin must be included within any benchmark funeral package. This is to seek to ensure that customers can expect to receive 'standard' coffins of very similar (if not the same) quality, whichever funeral director is providing the benchmark funeral package.
- (d) **Choice of route for funeral procession:** we consider that the choice of route for a funeral procession under the benchmark funeral package should be within a maximum five mile radius of the direct route of the funeral procession.
- (e) **One limousine:** we believe that this element should be excluded from the benchmark funeral package, on the basis that:
  - (i) certain customers may be expected to choose different forms of transportation if this service was excluded, particularly if this represents a meaningful cost saving to them; and
  - (ii) for those customers that would want to have one limousine, they would be able to personalise the funeral with the addition of this service;
- (f) **Embalming:** in view of the concerns previously outlined by the CMA in relation to the possible oversupply of embalming,<sup>6</sup> we believe that this element should be excluded from the benchmark funeral package, on the basis that:
  - (i) the inclusion of this service within the package risks positioning this as the "norm", when a number of funeral directors currently provide this as an

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<sup>4</sup> CMA working paper "Information and Transparency Remedies", paragraph 97(a)-(e), published on 30 January 2020.

<sup>5</sup> CMA working paper "Information and Transparency Remedies", paragraph 97(a)-(e), published on 30 January 2020.

<sup>6</sup> CMA working paper "Funeral director sales practices and transparency Information and Transparency Remedies", paragraphs 103 – 104, published on 30 January 2020.



additional service, and it may not in any event be socially or culturally acceptable within certain communities; and

- (ii) for those customers that would want to have their loved one embalmed, they would be able to personalise the funeral with the addition of this service.

2.31 **Paragraph 101(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?**

2.32 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.33 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we repeat our position outlined at paragraph 2.15 above that all funeral directors should be subject to this remedy.

2.34 In this context, we also repeat our position outlined at paragraphs 2.25 – 2.30 above regarding the suggested benchmark funeral package.

2.35 **Paragraph 101(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)?**

2.36 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.37 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we do not consider that there is evidence to suggest a lower or declining demand for aspects included within the propose benchmark funeral package.

2.38 Notwithstanding this, as outlined above, we believe that care should be taken to ensure that any benchmark funeral package excludes products and services that are not objectively necessary to enable the cremation or burial of the deceased, and we repeat our position outlined at paragraphs 2.28 – 2.30 above.

2.39 **Paragraph 101(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))?**

2.40 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.41 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, then by reference to the suggested elements of a benchmark funeral package set out within Table 1 (as considered at paragraph 2.30 above), we believe that:

- (a) **Collection and transportation of the deceased:** this should be time-limited to the hours of 8am – 6pm, on the basis that the majority of deaths do not occur "out of hours" in the community, but rather occur within a range of institutions, and it would therefore not be appropriate for customers to purchase a 24-hour service "as standard".
- (b) **Storage of the deceased:** for the purpose of the calculating a price cap for a benchmark funeral package, storage should be limited to a period of 48 hours.
- (c) **Choice of route for funeral procession:** the choice route for a funeral procession under the suggested benchmark funeral package should be within a maximum five mile radius of the direct route of the funeral procession.

2.42 **Paragraph 101(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)?**

2.43 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.44 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we believe that all funeral directors should be required to provide a benchmark funeral package which should:

- (a) include those elements that are objectively necessary to enable the cremation or burial of the deceased, with a level of quality and service that would be acceptable to the majority of customers;
- (b) require that customers have the option to personalise the funeral by adding specific products and/or services, and require that funeral directors provide customers with the specific cost associated with each additional product or service in advance; and
- (c) require funeral directors to provide customers with specific details of the costs of local disbursements required in connection with a funeral, including for example:
  - (i) a full breakdown of fees charged by each local crematorium;
  - (ii) a full breakdown of fees charged by each local cemetery; and
  - (iii) a full breakdown of applicable medical fees,

including publicising "worked examples" of the overall costs of different types of funerals locally, as appropriate.

- 2.45 As noted, above, we believe that this framework, and the increased transparency in relation to prices and options, would ensure that customers had greater clarity with regard to:
- (a) the options available to them when choosing a funeral (including in relation to choices of local crematoria, where relevant, and associated disbursements); and
  - (b) the expected maximum overall price of their chosen funeral, including local disbursements.
- 2.46 **Paragraph 101(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))?**
- 2.47 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.48 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we do not consider that a price cap on average revenue per funeral would effectively address any AECs and customer detriment, nor would it address unintended market distortions.
- 2.49 For example, while a price cap on average revenue per funeral could in theory divert from a focal point for price alignment, there remains the obvious risk that the costs of funeral directors' inefficiencies are simply passed directly onto their customers, as observed within the Further Working Paper.
- 2.50 **Paragraph 101(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))?**
- 2.51 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.52 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we believe that the same approach to the design of a price cap is required across the UK.
- 2.53 In this context, we reiterate that if the CMA is minded to give further consideration to the appropriate level of any initial price control, we believe that the CMA must necessarily take into account:
- (a) the additional costs of compliance that funeral directors may be expected to face following the conclusion of this market investigation (e.g. as a result of the implementation of a possible package of remedies);
  - (b) the need for any initial price control remedy to enable funeral directors to cover the totality of these additional costs of compliance in the context of their overall

costs, while earning a reasonable profit upon the products and services that they provide; and

- (c) in this context, informed feedback from relevant market participants from across the UK in relation to an acceptable level for any initial price control that the CMA may consider, so as to seek to avoid an outcome whereby competition is reduced as a consequence of exit, and/or increased barriers to entry, and/or expansion.

2.54 **Paragraph 101(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))?**

2.55 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.56 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we consider that any price cap for a benchmark funeral package should be set at a regional level, having regard to material regional cost variations attributable to geographic locations (including, for example, the cost of property, and the cost of regionally-weighted employee salaries).

2.57 **Paragraph 101(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)?**

2.58 We consider that the proposal of price regulation for funeral directors in the UK (including Scotland) goes further than the legislative provisions of the Burial and Cremation (Scotland) Act 2016.

2.59 In this context, we note in particular that:

- (a) the Scottish Government's "The Funeral Director: Code of Practice" (as issued by Scottish Ministers by virtue of the powers set out in section 97 of the Burial and Cremation (Scotland) Act 2016); and
- (b) the Scottish Government's "Guidance on funeral costs" (published under Section 98 of the Burial and Cremation (Scotland) Act 2016),

do not impose price regulation upon funeral directors. Instead, these publications focus upon addressing information and transparency aspects in relation to funeral directors' products and services.

## **Implementation, monitoring and enforcement**

- 2.60 **Paragraph 101(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:**

**Implementation?**

**Monitoring?**

**Enforcement?**

- 2.61 In view of our concerns summarised within paragraph 2.14 above, we do not believe that the implementation, monitoring, and enforcement of a price cap for a benchmark funeral package is a necessary and proportionate solution in the context of this market investigation.
- 2.62 However, even if we did not have these concerns, we would have serious reservations about the extent to which a price cap for a benchmark could be effectively enforced.
- 2.63 As noted above, we believe that the introduction of a price cap risks driving certain unwelcome behaviours by funeral directors, which would be aimed at avoiding the application of a price cap (including, for example, efforts to "upsell" personalised funeral packages). We consider that it would be very difficult to police effectively these types of behaviours.
- 2.64 **Paragraph 101(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))?**
- 2.65 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.66 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we consider that to avoid direct or indirect discrimination between funeral directors, the reporting requirements should be the same for all funeral directors.
- 2.67 **Paragraph 101(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))?**
- 2.68 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.69 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we consider that the onus should be upon funeral directors to ensure they are not only compliant with the remedy, but also are required to

display relevant information in prominent positions online, in their promotional literature, and within their premises (potentially in compliance with other remedies, should they be introduced).

- 2.70 In addition, public awareness could be increased more generally through a limited promotional campaign, with clear and concise messages being provided to consumers regarding the price control remedy.
- 2.71 **Paragraph 101(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?**
- 2.72 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.
- 2.73 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, the extent of the preparation that funeral directors will need to undertake will be dependent upon:
- (a) the nature of the price control regulation; and
  - (b) the additional costs of compliance following the conclusion of this market investigation.
- 2.74 In the event that the CMA was to introduce a benchmark funeral package, which was subject to regional price caps, on a conservative basis we consider that:
- (a) to prepare for the implementation of this price control regulation, funeral directors would require at least two years following the conclusion of this market investigation, assuming they would already be aware of the extent of the additional costs of compliance that they will face at the time of the conclusion of this market investigation (e.g. as a result of the implementation of a possible package of remedies); and
  - (b) funeral directors would require a longer period of time to prepare for the implementation of this price control regulation, if the additional costs of compliance that they will face are not known at the time of the conclusion of this market investigation; and
  - (c) in terms of preparing for the implementation of this price control regulation, funeral directors would need to consider fully the activities of their business on a site-by-site basis, in order to:
    - (i) estimate insofar as possible the likely impact of this price control regulation upon the profitability and viability of each location, having regard in particular to the extent of any additional costs attributable to that location;
    - (ii) consider (and ideally 'market test' for a period of time) means by which to seek to secure the profitability and viability of each location; and

- (iii) if certain locations are considered unlikely to be viable following the implementation of this price control regulation, consider the possible options for those locations.

2.75 **Paragraph 101(s): What would be the likely costs of implementation, monitoring and enforcement for funeral directors?**

2.76 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.77 In any event, in the absence of further information, we are presently unable to provide a meaningful estimate of the likely costs of implementation, monitoring, and enforcement.

2.78 Further, we note in any event that these costs may be expected to differ for each of the more than 2,000 funeral directors that a price control remedy would affect.

2.79 **Paragraph 101(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)?**

2.80 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

2.81 **Paragraph 101(u): Do you consider there to be other risks or options for mitigation which we have not considered (paragraphs 75-77)?**

2.82 We do not believe that there are other risks, or options for mitigation, which the CMA has not considered.

**3 FURTHER WORKING PAPER: REMEDY OPTIONS FOR REGULATING THE PRICE OF CREMATORIA SERVICES**

3.1 **Paragraph 110: We would welcome views on our current thinking that any price regulation in the form of a maximum price would apply to all crematoria operators in the same way.**

3.2 While we believe that the introduction of a price cap for funeral directors is very likely to result in significant unintended distortions to outcomes within the market (see paragraph 2.3 above), we consider this to be less likely in relation to crematoria operators. This is on the basis that:

- (a) compared to funeral directors, crematoria operators generally have fewer (if any) local competitors; and
- (b) as a consequence, customers have a more limited choice of crematoria operators (if any) in a large number of local areas across the UK.

3.3 In this context, we note the conclusions of the CMA's analysis within its working paper "Crematoria: background and market structure", and the summary that:

*"Our analysis shows that most crematoria face a limited number of rivals in their local areas. In particular, around half of crematoria face no rivals within a 30-minute cortege drive time, and only a small number of crematoria have three or more rivals within a 30-minute cortege drive time (we would typically expect that in a local market with four or more competitors, competition may be sufficient)".<sup>7</sup>*

- 3.4 Therefore, having regard to the more limited choices for customers, we consider that:
- (a) information and transparency remedies are less likely to remedy any AECs in relation to crematoria services, and any resultant, or expected, detrimental effects on customers (should they be found in this market investigation); and
  - (b) the introduction of a price cap for crematoria operators could therefore provide an effective remedy.
- 3.5 If the CMA was to introduce price regulation for crematoria operators in the form of a price cap, we consider that this should apply to all crematoria operators in the same way, albeit that this price cap should be set at a regional level (as considered further below).
- 3.6 **Paragraph 111: We would welcome responses on the approach to defining the scope of products and services included in the benchmark package.**
- 3.7 We note that environmental surcharges are currently listed in the context of the suggested benchmark cremation package, but that the CMA is presently contemplating excluding these from the package (to the extent that variations in these charges are more than nominal), so as to more readily enable comparisons.<sup>8</sup>
- 3.8 However, given that environmental surcharges are not optional, and customers would be required to pay these fees, we consider that these should be included within a benchmark cremation package.
- 3.9 **Paragraph 111(a): Are there are any products or services which are not currently included in the suggested benchmark package which should be included? What is the evidence to support this view?**
- 3.10 We believe that the provision of the service of the scattering of ashes within the crematorium grounds should be included within a benchmark cremation package.
- 3.11 This would then provide the customer with a maximum price for the cremation, as well as the placement of their loved one's ashes in a respectful and suitable location.

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<sup>7</sup> CMA working paper "Crematoria: background and market structure", paragraph 76, published on 30 January 2020.

<sup>8</sup> CMA working paper "Remedy options for regulating the price of crematoria services", paragraph 56, published on 20 February 2020.



- 3.12 Should a family wish to be present at the scattering of their loved one's ashes, we consider that this should be a separate, chargeable service, given that the crematorium would need to provide suitable personnel at an allotted time.
- 3.13 **Paragraph 111(b): Are there any products or services which have been included in the suggested benchmark package which should not be included? What is the evidence to support this view?**
- 3.14 We do not consider that any products or services have been included in the suggested benchmark package which should not have been.
- 3.15 **Paragraph 111(c): What is your view on time-based restrictions relating to the benchmark package, for example the length of the chapel slot?**
- 3.16 We consider that certain time-based restrictions relating to the benchmark cremation package would be appropriate. For example, we believe that the chapel slot should be for a minimum of 30 minutes.
- 3.17 **Paragraph 112: We welcome views on how the price cap measures could be determined and reviewed, in particular:**
- 3.18 **Paragraph 112(d): Do you consider that using pricing information from the sector is a sensible approach for designing a price cap for crematoria? Do you think a rate of return approach would be more appropriate in this sector?**
- 3.19 We do not consider a rate of return approach to be appropriate, as this would not effectively address any AECs and customer detriment, nor would it address unintended market distortions.
- 3.20 For example, by using this approach there remains the obvious risk that the costs of crematoria operators' inefficiencies are simply passed directly onto their customers, as observed within the Further Working Paper.
- 3.21 We therefore consider that it would be more effective to use pricing information from the sector to design a price cap for crematoria.
- 3.22 In this context, we believe that the price cap for a benchmark cremation package should be set at a regional level, having regard to material regional cost variations attributable to geographic locations (including, for example, the cost of property, and the cost of regionally-weighted employee salaries).
- 3.23 **Paragraph 112(e): Do you have any views on the design variants we have outlined (for example, whether the price level of any price regulated package should be set as one price across the UK, whether we should make allowances for certain higher cost areas such as London or whether any cost base should be done on a crematoria by crematoria basis or otherwise)?**
- 3.24 As noted at paragraph 3.22 above, we believe that a price cap designed using pricing information from the sector should be set at a regional level.

3.25 **Paragraph 112(f): Do you have any suggestions as to the criteria we should use to set the benchmark for the initial level of the price cap?**

3.26 We do not have any suggestions at this stage.

3.27 **Paragraph 112(g): Do you have any views on how the Burial and Cremation (Scotland) Act 2016 should interact with any price regulation implemented by the CMA, or a new regulator?**

3.28 We do not have any views at this stage.

3.29 **Paragraph 113: We are also interested in responses of the following questions relating to implementation, monitoring and enforcement of the price control:**

3.30 **Paragraph 113(h): What is your assessment of whether the option of setting a maximum price for a benchmark package of products/services (paragraph 49) is capable of effective:**

**Implementation?**

**Monitoring?**

**Enforcement?**

3.31 As a general observation, we consider that setting a price cap for a benchmark package of products/services to be offered by crematoria operators could be implemented, monitored, and enforced, particularly in view of the relative similarity of crematoria services.

3.32 **Paragraph 113(i): Do you think that compliance reporting requirements to the CMA or a regulator, should be the same for all crematoria?**

3.33 Yes. We consider that requirements to report compliance to the relevant authority should be the same for all crematoria.

3.34 **Paragraph 113(j): Do you have any views or suggestions on designing and implementing an effective communication strategy to ensure that consumers, crematoria and relevant third parties understand their rights and responsibilities if price regulation is introduced? In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 105.b)?**

3.35 Currently, we consider that the majority of the communication with customers regarding crematoria pricing and choice (to the extent that this exists) takes place between funeral directors and their customers.

3.36 On this basis, we believe that funeral directors would have a role to play in ensuring that consumers understood their rights if a price control remedy was to be introduced for crematoria operators.

- 3.37 In addition, public awareness could be increased more generally through a limited promotional campaign, with clear and concise messages being provided to consumers regarding the price control remedy.
- 3.38 **Paragraph 113(k): What preparation would be required and how long do you think crematoria might require to prepare for the implementation of any price control regulation?**
- 3.39 In the absence of activities in relation to the operation of crematoria, we do not consider that we are well-placed to respond to this question.
- 3.40 **Paragraph 113(l): What would be the likely costs of implementation, monitoring and enforcement for crematoria?**
- 3.41 In the absence of activities in relation to the operation of crematoria, we do not consider that we are well-placed to respond to this question.
- 3.42 **Paragraph 113(m): Do you consider an initial duration of 5 to 7 years is an appropriate period for the implementation of a price control remedy and achievement of its aims (paragraph 108)?**
- 3.43 In the absence of activities in relation to the operation of crematoria, we do not consider that we are well-placed to respond to this question.
- 3.44 **Paragraph 113(n): Do you consider there to be other risks or options for mitigation which we have not considered (paragraphs 83-86)?**
- 3.45 We do not believe that there are other risks, or options for mitigation, which the CMA has not considered.

#### **4 FURTHER WORKING PAPER: LOCAL AUTHORITY TENDERING REMEDY PROPOSAL**

- 4.1 **Paragraph 49: We would welcome views on the proposals outlined in this working paper and any other comments on a proposed LA tendering remedy. In particular, we would welcome comments on the following questions.**

##### **LA tendering as a remedy option**

- 4.2 **Paragraph 49(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. Please answer with respect to each of the implementation options available, that is:**
- 4.3 **Paragraph 49(a)(i): a CMA Order applicable to all LAs;**
- 4.4 For the reasons outlined below, we do not consider that a CMA Order applicable to all LAs would be effective or proportionate.

4.5 This is as a CMA Order applicable to all LAs would need to provide sufficient clarity on the specific requirements (and the extent to which these could be flexed as necessary) in relation to aspects including (i) products; (ii) services; (iii) quality; (iv) prices; and (v) the appointment of funeral director(s) to provide these products and/or services.

4.6 In view of the range of current LA schemes, and the variations between these schemes,<sup>9</sup> we do not consider that a CMA Order applicable to all LAs would be likely to be capable of providing an appropriate level of flexibility, whereby each LA would remain able to address the specific needs of its communities in compliance with the CMA Order.

4.7 In addition, in circumstances in which:

(a) customer demand for schemes may be expected to vary from LA to LA, such that the likely interest in a new LA scheme is not known; and

(b) each LA is likely to have a different view in relation to the need for an LA scheme,

we consider it to be disproportionate to impose a requirement for an LA scheme upon all LAs, particularly given the resources and costs associated with the operation of such a scheme (including monitoring and enforcement), and resourcing and budgetary constraints that LAs face.

4.8 **Paragraph 49(a)(ii): a CMA recommendation to LAs;**

4.9 Having regard to paragraphs 4.4 to 4.7 above, we consider that a CMA recommendation to LAs (whereby LAs can then choose whether or not to follow the recommendation, and what this may cover) would be more effective and proportionate than a CMA Order to LAs (or a CMA recommendation to central government(s), as considered below).

4.10 This is primarily on the basis that each LA would be able to respond to the CMA recommendation as it considered appropriate, having regard to aspects including:

(a) existing competition within the LA;

(b) customer demand for such a scheme within the LA;

(c) the LA's own available resources and budget to use in connection with the scheme; and

(d) the structure of the tender process, and the outcomes that this seeks to deliver, having regard to customer demand and demographics within the LA.

4.11 **Paragraph 49(a)(iii): a CMA recommendation to central government(s) that it/they should create a statutory responsibility on LAs.**

4.12 Assuming that a CMA recommendation to central government(s) that it/they should create a statutory responsibility on LAs would - if implemented by central government(s)

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<sup>9</sup> See, Appendix A of the Further Working Paper.

- result in an outcome similar to a CMA Order applicable to all LAs, we do not consider that such a recommendation would be effective or proportionate for the reasons outlined at paragraphs 4.4 to 4.7 above.

4.13 **Paragraph 49(b): How should the specification of the funeral product to be provided under a LA scheme be determined?**

4.14 **Paragraph 49(b)(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.**

4.15 We consider that each LA is best placed to determine the specification of the funeral product for its LA, having regard to customer demand and the existing demographics of the catchment area.

4.16 With this in mind, we reiterate our view that the flexibility of a CMA recommendation to LAs would be more effective and proportionate than either (i) a CMA Order to LAs; or (ii) a CMA recommendation to central government(s).

4.17 **Paragraph 49(b)(ii): How much scope, if any, should there be for variations between LAs?**

4.18 As noted above, we consider that each LA is best placed to determine the specification of the funeral product for its LA, having regard to customer demand and the existing demographics of the catchment area.

4.19 With this in mind, we reiterate our view that the flexibility of a CMA recommendation to LAs would be more effective and proportionate than either (i) a CMA Order to LAs; or (ii) a CMA recommendation to central government(s).

4.20 **Paragraph 49(c): What might be potential unintended consequences of wider LA tendering for low cost residents' funerals?**

4.21 If wider LA tendering results in greater local competition "for the market" (or "for a part of the market"), there is a risk that smaller funeral directors in particular which either:

(a) did not participate in the tender; or

(b) were unsuccessful in the tender,

will face significant financial challenges as a result of losing comparatively large volumes to the winner of the tender, which would lessen their ability to compete effectively, and could prompt their exit. This risk would be increased if the LA scheme became the default funeral arrangement in certain circumstances (e.g. in the case of deaths in LA-operated care homes).

4.22 In addition, we consider that the resources and budget that an LA would be required to dedicate to establishing and operating a new LA scheme cannot be underestimated. While certain LAs may already have considered allocating resources and budget for this purpose, we anticipate that a number of LAs would struggle to find sufficient resources

and/or budget to allocate at this time. With this in mind, we believe that a number of LAs would not welcome an obligation upon them to provide an LA scheme. We also note that, in response to such an obligation, certain LAs may have to reduce or remove resources and/or budget from other community services (e.g. children's services, and/or services for vulnerable adults), in order to be able to establish and operate a new LA scheme.

4.23 With this in mind, we reiterate our view that the flexibility of a CMA recommendation to LAs would be more effective and proportionate than either (i) a CMA Order to LAs; or (ii) a CMA recommendation to central government(s).

4.24 **Paragraph 49(d): What are the current barriers to LAs establishing tendered low cost funeral schemes (e.g. available resources, other priorities, not regarded as a LA responsibility, etc.)? How might they be overcome?**

4.25 As noted above, we consider that the resources and budget that an LA would be required to dedicate to establishing and operating a new LA scheme cannot be underestimated.

4.26 Where LAs do not have available resources and/or budget, they may not choose to prioritise establishing an LA scheme, particularly if to do so would require existing LA community services to be reduced or ended, and the LA does not consider that this overall outcome would be beneficial to the community that it serves.

4.27 **Paragraph 49(e): What are the barriers to funeral director participation in LA tenders for resident schemes? How might they be overcome?**

4.28 Funeral directors may be unwilling to participate in tenders in the absence of guaranteed additional volumes.

4.29 While this could be addressed to a greater or lesser degree by the design of tenders (e.g. the LA could appoint one funeral director for a set time period to facilitate the LA scheme), as noted at paragraph 4.21 above, there is a risk that smaller funeral directors in particular will face significant financial challenges as a result of losing comparatively large volumes to the winner of the tender.

4.30 **Paragraph 49(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?**

4.31 Bereaved families may not be aware that LA schemes are currently offered in certain areas. Moreover, where bereaved families are or become aware of LA schemes, there may be a stigma associated with having a "council funeral".

4.32 This is on the basis that a "council funeral" risks being conflated with a "pauper's funeral" (i.e. a public health funeral, typically arranged by the relevant LA's environmental services team), and stigmatised due to aspects including (i) the perceived lower quality of a "pauper's funeral"; and (ii) the perceived implication that this would be a "hand-out" at

the taxpayers' expense (see, for example, the BBC news article "*Paupers' funerals cost UK councils nearly £5.4m in a year*").<sup>10</sup>

4.33 In view of this, we consider that there would need to be considerable advertising and influencing to overcome this stigma, particularly where new LA schemes were being set out, and that this expenditure would be without any guarantee of success.

4.34 **Paragraph 49(g): What impact have existing LA schemes had on wider pricing for funerals in their respective local areas?**

4.35 We are aware of one LA scheme that operates in areas in which we offer funeral services. Notably, the LA scheme in question does not provide customers with access to a hearse, and the majority of the customers that we serve would not consider this as an option for their loved ones.

4.36 We therefore consider that the LA scheme has had a limited effect on wider pricing in the areas in which it operates, on the basis that the funeral service is perceived by the majority of customers to be of a lower quality.

4.37 **Paragraph 49(h): What should be the CMA's priorities for further analysis or evidence gathering on existing schemes?**

4.38 For existing LA schemes, we consider that the CMA should prioritise analysing:

- (a) the year-on-year increase (or decrease) in the number of funerals provided under each LA scheme, and the reasons for significant increases (or decreases) in volume;
- (b) whether funeral directors' bids for LA schemes were based upon their anticipated levels of additional volume that would result from winning the tender; and
- (c) if so, whether winning bidders chose to re-tender for LA schemes in circumstances in which their anticipated levels of additional volume did not materialise.

#### **LA tendering as basis for price benchmarks**

4.39 **Paragraph 49(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?**

4.40 We reiterate our position outlined at paragraph 2.14 above as to why the introduction of a price control remedy for funeral directors is not a necessary and proportionate solution.

4.41 However, in the event that the CMA is minded to give further consideration to a price control remedy for funeral directors, we do not consider that the outcomes of LA tendering exercises for LA schemes would provide useful data points for benchmarks, if

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<sup>10</sup> BBC news online "*Paupers' funerals cost UK councils nearly £5.4m in a year*", 9 January 2019, available at: [www.bbc.co.uk/news/uk-england-46796036](http://www.bbc.co.uk/news/uk-england-46796036) (accessed 8 March 2020).

funeral directors' bids for such schemes are based upon their anticipated levels of additional volume that would result from their participation.

4.42 In this context, we note that the Further Working Paper provides that:

*"[i]n principle, existing and prospective LA schemes could provide useful data points to benchmark prices, either in their own right, or as a cross-check on other candidate price benchmarks. **They represent prices arrived at through some sort of competitive process, where, as noted above, the demand-side features (e.g. grief, time-pressure) which typically limit individual consumer engagement in purchasing an at-need funeral are not present**"<sup>11</sup> (emphasis added).*

4.43 We consider this paragraph of the Further Working Paper could be read as suggesting that, simply by removing certain factors that would affect an individual customer in the context of a one-off purchase (e.g. grief, time-pressure), prices under LA schemes are necessarily more competitive.

4.44 However, we believe that this reading would be incorrect and misleading if funeral directors' prices under LA schemes are based upon the funeral directors' expectations regarding the additional overall volumes they will receive as a result of their participation (which we assume would be the case).

4.45 In such circumstances, we anticipate that it is the funeral directors' expectations regarding additional overall volumes that will primarily incentivise them to offer prices under LA schemes which are lower than prices offered for a single, one-off purchase.

4.46 In this regard, a funeral director may offer lower prices when bidding for an LA scheme to seek to "win the market", and thereby achieve efficiencies and cost savings from the expected additional overall volumes.

4.47 Therefore, if prices offered under LA schemes are taken out of their actual economic context (i.e. whereby funeral directors' prices offered in the context of LA schemes necessarily anticipate repeat purchases, and have factored in consequential efficiencies and cost savings), and are instead viewed reductively as an appropriate benchmark price point for a single, one-off purchase (which would not be expected to generate the same efficiencies and cost savings) and applied in the context of a price control remedy for funeral directors, this may be expected to lead to under-compensation, thereby:

- (a) lessening the viability of businesses, thereby prompting exit, and increasing barriers to entry and/or expansion; and
- (b) reducing competition, adversely affecting consumers as a consequence.

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<sup>11</sup> Further Working Paper, "Local Authority tendering remedy proposal", paragraph 46, published on 20 February 2020.



## **Other comments**

4.48 **Paragraph 49(j): Please provide any other relevant comments or observations on these proposals.**

4.49 We do not have any other comments or observations at this stage.

## **5 FURTHER WORKING PAPER: UPDATED OVERVIEW OF KEY RESEARCH AND ANALYSIS**

5.1 **Paragraph 117: We would welcome views on the issues and options we have set out in this paper.**

5.2 **Paragraph 118: We would also welcome other remedy proposals or comments on any relevant issues which we have not addressed in the working papers summarised in paragraphs 97 to 117 above.**

5.3 We do not have any other remedy proposals or comments at this stage.