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## Response to CMA Working Papers published on 20 February 2020

### 1. Introduction

The National Association of Funeral Directors (NAFD) is the largest and most inclusive trade association for the UK funeral profession. We represent the interests of the entire spectrum of funeral directing businesses – including independent and family owned firms, co-operatives and major funeral groups – and have more than 4,000 UK funeral homes in membership. Between them, NAFD member firms conduct the vast majority of UK funerals each year.

### 3. Overview of NAFD response

The NAFD notes that the CMA has yet to find any competition concerns in the market, and that the proposed remedies are therefore hypothetical. Nonetheless we are concerned that the CMA has consulted on the option of economic/ price regulation in the funerals market since, in our view, such intrusive regulation is likely to restrict competition, reduce choice for consumers, increase costs for Funeral companies disproportionately and be difficult and costly to enforce.

This very interventionist type of regulation carries significant risks to businesses and consumers alike, and should be reserved for markets in which particular firms have significant market power and are able to behave in a monopolistic way. It is far from clear that this is true of the funeral market, in which the vast majority of services are provided by SMEs.

The NAFD accepts that the funeral market- like most others- is not serving consumers as it might. That is why the NAFD has already taken steps to improve the transparency and comparability of pricing information and has plans to improve the independence of our inspection process. Our strong view is that any additional regulatory interventions should focus on remedying structural issues about information asymmetry in order to facilitate consumer choice and effective competition. Among other things, the NAFD has committed to requiring our members to make their pricing information available online in 2020,<sup>1</sup> adopting the code of practice currently being developed by the Funeral Service Consumer Standards

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<sup>1</sup> Our intention had been to announce this requirement at our annual conference, which had to be cancelled due to the coronavirus pandemic. We remain committed requiring members to display pricing information online and are in the process of updating our online member directory (funeraldirectory.co.uk) in order to facilitate this.

Review and setting up an arms-length regulatory body to oversee compliance with these standards.

However, we do not believe the evidence supports the view that the market is operating in a way that inhibits competition between funeral service providers. In fact, competition appears to be working well both on a local and, in relation to the larger players, on a national level (e.g. in relation to the price of a 'simple funeral').

We also note that the coronavirus pandemic has the potential to significantly impact the funerals market, both in the short and longer term, meaning that much of the data collected by the CMA over the course of its market investigation will now be outdated and of limited relevance. At the time of writing, funeral businesses across the country are experiencing a significant drop-in income as a result of restrictions on the types of service they can offer while complying with government guidance, at a time when operational costs have risen due to significant staff absence (due to sickness and isolation) and the cost of certain protective equipment has risen sharply. The negative impact on businesses will be exacerbated by the inevitable rise in the number of consumers whose ability to pay for funeral services will be affected by the general economic downturn.

We would also highlight that consumer behaviour has changed significantly since the coronavirus outbreak. Not only are a much larger proportion of consumers currently booking funerals at a distance, either online or via the phone, but the types of service being consumed has necessarily changed beyond all recognition. During this period, the traditional funeral package, which has clearly shaped the CMA's thinking around potential remedies, has ceased being a useful reference point for understanding the market.

We recognise that the CMA's working papers were published before the Covid-19 pandemic had hit funeral directing businesses but it is now very clear that the funeral market will be significantly impacted going forward. This significantly increases the risk of unintended consequences, should any of the CMA's proposed price control remedies be implemented. In these circumstances, a much more sensible approach would be for the CMA to review the effectiveness of non-economic structural measures before considering more extreme alternatives.

#### [4. NAFD response to questions posed by the CMA working paper on remedy options for regulating the price of funeral director services at the point of need](#)

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

It is important to keep in mind that the CMA is yet to find that any adverse effects on competition (AECs) exist within the funerals market. Without knowing what the AECs are, or that they even exist, it is very difficult to usefully assess whether price control remedies are likely to be an effective solution to them. It is therefore deeply concerning that this question has been framed in a way that indicates that the CMA has already formed a view on this and has invited respondents to agree with this view.

It is possible to consider the likely effectiveness of such remedies in the limited context of the CMA's own statement, made at paragraph 18 of the working paper, that remedies should be "capable of effective implementation, monitoring and enforcement". As we describe in detail

in response to questions (e) and (k) below, we do not consider price regulation to be an effective solution to remedy any AECs. There are a range of reasons why price regulation – and in particular the two options considered in the working paper – would be limited in their effectiveness in terms of implementation, monitoring and enforcement.

The effectiveness of a benchmark cap on a standard funeral package, such as the one being considered by the CMA, would be undermined where funeral directors choose to offer funerals that do not meet the specifications of the package; upselling could be incentivised such that consumers are faced with even higher priced options; the package price could create a false floor in the market such that cheaper options are no longer widely promoted to consumers; and defining the package to be regulated is likely to be extremely complex given the vast range of options and differences that currently (and increasingly) occur within even a ‘standard’ funeral between funeral directors and across customers. Similarly, monitoring and enforcement of this option is unlikely to be effective – unless at great cost to the CMA or other regulator – given the large number of funeral directors and the wide range of products and services on offer.

The effectiveness of an average revenue cap is also subject to great uncertainty. An average revenue cap would not take into account the very different mix of funerals offered by funeral directors across the country (even within the ‘standard funeral’ concept). For some firms the cap may be far too high given the type of funerals they offer and thus of no effect in preventing ‘excessive’ prices for a certain funeral type; for others the cap may be far too low such that there are unintended consequences, which we describe in detail under question (k).

**(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?**

We strongly disagree that a price control remedy is a necessary and proportionate solution to remedy any AECs. Firstly, the CMA has not yet drawn conclusions on the nature or existence of AECs and therefore assessing the proportionality of price regulation (in the sense of the costs and unintended consequences compared to the benefits and effectiveness) is not possible at this stage. There are nevertheless a number of reasons why price regulation is not likely to be a proportionate response in this market.

#### Nature of the funeral directors’ market

First, due to the high cost, burden and risk of distortions involved, price regulation is almost always applied to markets that are very different to the funeral directors market, e.g. those with a limited number of participants (compared to the over 2,000 funeral directing businesses); clear market power and/or structural problems (e.g. barriers to entry, high concentration), with potentially little prospect of future competition (such that price regulation is not at risk of distorting natural competitive forces); homogeneous products across providers that are relatively straightforward to estimate the costs of; and observable and measurable quality. There are few examples of price regulation in the UK in analogous markets.

The issues in the market that the CMA has identified to date (e.g. rising costs of funerals, funeral poverty, evidence of high profits) could be explained by other phenomena such as increasing demand for personalisation among customers; increasing costs of disbursements; payment issues which make the cheapest funerals unappealing to less well-off customers (e.g. upfront payment for basic funerals and the operation of the funeral benefit); and firms being at a particular point in the competitive cycle e.g. where they are earning high profits due to innovation/quality but where these profits could be eroded in the future with market entry. It is not clear that price regulation would be a proportionate or even necessary response to these phenomena.

#### Cost burden on the CMA / sector regulator

Price regulation in general could entail a significant cost burden on the CMA or a sector regulator. Costs would include creating a register of funeral directors and managing registration; a clear and suitable definition of “funeral director” to avoid firms with slightly different offerings circumventing regulation, whilst at the same time not mistakenly capturing ineligible firms under the regulation; collecting and analysing data and setting the appropriate price/average revenue cap; updating the price cap to ensure it remained effective; monitoring the thousands of firms for compliance; and dealing with enforcement action, non-compliance, firms’ queries and so on. We provide more detail on likely costs in our responses to questions (e), (k) and (o).

#### Cost burden on firms

Compliance costs on firms could also be significant. There is still no clarity on how the price/revenue cap would be set – requirements to submit pricing or cost data to a regulator could require firms to implement costly reporting or cost allocation systems. Other cost implications would include regulatory reporting; compliance management; the payment of a levy to support the regulator; and potentially inefficient business decisions to mitigate against the risk of non-compliance.

Cost burdens could lead to smaller (e.g. family run) firms leaving the market. If these are not replaced by others then existing large funeral directors could gain market share, distorting the market and introducing structural problems such as concentration and market power.

#### Market distortions

Price regulation could also result in a “race to the bottom” if the price cap is set too low and firms compromise quality in order to save costs and retain a profit. This risk would be exacerbated if there is a delay between price regulation (through CMA) and the setting up of a quality regulator and introducing quality regulation. It is therefore particularly concerning that the CMA is considering directly implementing price regulation while only making a recommendation in relation to the regulation of quality and standards. Such an approach would all but guarantee such a delay.

Price regulation can also distort competitive market signals (e.g. for entry and exit and innovation), leading to worse outcomes for customers and entrenching any existing competition problems. The evidence gathered by the CMA suggests that currently barriers to

entry are not an issue in this market, but this could change if regulatory compliance costs are high, and caps on natural profit due to innovation or business cycles could also deter market entry and innovation. The possibility to enter the market initially as a niche provider of high value funerals may also be eroded. Instead would-be entrants would need to enter at scale if they are to compete with established providers offering a standard service at a low cost.

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

Given our conclusion that price control remedies are not appropriate and are unlikely to be effective or proportionate, we do not agree with this statement.

**(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)?**

We consider that price control remedies are not appropriate and are unlikely to be effective and thus do not support the application of such regulation to any provider. Notwithstanding that, the burden of regulation may have a particularly negative effect on small, less sophisticated providers and those with certain niche product offerings. Market exit among these firms may be high, leading to structural problems in the market and a reduction of choice for consumers.

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

The numerous practical difficulties of this option are likely to render it ineffective, burdensome and distortive to the market.

Definition of the standard funeral package

Defining the standard funeral package to which the price cap would apply will be extremely challenging. The elements included in the CMA's list in paragraph 60 could be considered all part of a 'standard' funeral, but there is great variety in how these are specified across funeral directors. For example, the cost of the hearse or coffin or flowers will vary significantly across firms and their own specific offerings. This means that defining a truly common or homogenous product and then determining an accurate price cap will be virtually impossible, without risking material distortions.

Some funeral directors specialise in certain funeral offerings, for example high-end funerals that have all the features of a 'standard' funeral but where each element is relatively costly – a single luxury hearse, a certain length of time spent with the customer arranging the funeral etc. Other – likely larger – firms may have a wide range of offerings e.g. a range of hearses in a fleet, or a more basic funeral service. Therefore, even though a 'standard' funeral for both firm types might consist of the same elements, the cost base is likely to be very different.

In addition, the ability of smaller funeral directors to offer a 'standard funeral' based on their current business models may vary significantly. For some that have deliberately sought to offer

a niche service, a requirement that they offer a 'standard service' will be akin to mandating that they offer a new service.

### The setting of the cap

Given the above, setting a single price cap will therefore have distortive consequences. If the cap is too low for some firms given their specific offerings then they would not be able to recover their costs and could exit the market. It could also result in sub-optimal levels of investment, or firms being unable to respond to consumer demand by increasing the quality of their standard funerals (i.e. inhibiting innovation and product development). If the cap is too high for other firms then it becomes ineffective.

Setting the cap based on a selection of firms' data could also distort the market if there are material differences between these particular firms and the others in the market. Just relying on data from a selection of funeral directors (e.g. the largest) as a basis for setting a cap on a funeral service all funeral directors will have to offer is not tenable, unless the CMA is happy to assume the material risk that its actions will prompt the exit of many smaller funeral directors from the market. The same issue applies to the proposed 'one size fits all' cap across all UK regions. There may be fundamental differences between funeral directors located in different geographical areas such that the cost profile of the comparator area is materially different to the cost profile of others. An example could include a larger firm with economies of scale being compared to a smaller, more costly firm which currently competes on quality rather than price. Whilst it would be possible to control for this (e.g. by introducing weightings for different areas) this would introduce a further monitoring cost as the regulator would need to periodically satisfy itself that the weightings were still appropriate.

### Effectiveness of the cap

Firms may be able to circumvent the funeral package prescribed by the CMA if they can prove they do not sell a 'standard funeral' as defined. It may also encourage firms to up-sell products and services not included in the package, or to define a package that has a certain type of service (i.e. very basic) that the firm knows customers will not want.

As recognised by the CMA, having a set price cap for a standard funeral could also result in a false floor such that competition for cheaper funerals declines. Consumers may be less well-off under a price cap if it gives them even less incentive to shop around and compare prices between funeral directors for the standard funerals. They could erroneously think that the cap means they will always be offered the cheapest funeral.

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

As we consider a benchmark price cap on a standard funeral package not an appropriate remedy, we have no detailed comments on the definition of this package. We reiterate the point that products and services can differ significantly in cost even within a 'standard' funeral depending on firms' business models or nuanced personalisation that does not appear to have been sufficiently reflected in the options.

**(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?**

See our response to (e) above. Funeral directors offering funerals which may have the elements of a ‘standard’ funeral but where the individual elements are more costly than the average e.g. being high-end. These would be most at risk of being captured under the cap which would destroy their business model and most likely lead to market exit.

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

The coronavirus pandemic has led to significant changes in consumer behaviour. The NAFD has not yet had opportunity to gather data on these changes but it seems highly likely that demand for services such as the provision of hearses and embalming will have greatly reduced in recent weeks.

The extent to which this will impact on consumer behaviour in the long-term remains to be seen.

**(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))?**

Consumers may or may not want the service options set out in the question. Requirements or restrictions on the provision of these will therefore remove an element of consumer choice and limit the extent to which businesses can compete against each other on these service aspects. The NAFD does not believe this would be in the best interests of consumers.

**(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)?**

Cost-reflectivity for disbursement costs may distort some funeral directors’ business models. Some firms may be able to cross-subsidise if they e.g. have buying power in one area which enables them to obtain these disbursements at a lower cost, thus enabling them to offer more ‘expensive’ disbursement services at a more affordable rate where customers demand these. Cost reflectivity would undermine the positive effects of price differentiation.

**(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))?**

A price control cap on average revenue per funeral could address some of the shortcomings of the package cap, particularly those regarding the definition of the package or the risk of a focal

point for prices. However, it has its own shortcomings which are likely to render it ineffective and/or disproportionate.

As with the package option, funeral directors provide funerals at a range of different costs, either as part of their business model (some only focus on high-end funerals) or in response to customer demand for personalisation (to note, personalisation does not only mean the addition of non-standard elements to a funeral, but also refers to the level of quality/cost for standard elements, e.g. a top-range hearse compared to a simple one). Therefore, setting a cap on the average revenue per funeral across the industry makes no allowance for legitimate cost differences across funerals. Such a cap may drive some firms out of the market, and may also restrict firms from innovating or changing their product mix during the time-period.

Similar issues to setting the cap using a selection of firms' data exist as with the benchmark cap option.

Using local authority pricing signals would be particularly distorting, as these could be much lower due to the bargaining power of the local authority and bear little resemblance to the actual cost of funerals. There is a danger of creating a similar, two-tier outcome to that observed with care homes, with those qualifying for local-authority care (priced funerals) effectively being cross-subsidised by other care home users/funeral buyers.

**(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))?**

Our view is that a price control is a disproportionate and potentially ineffective and distortive remedy, and as such do not have detailed comments on the design of the regulation. However, there are clear differences in cost-bases across the UK such that a one-size-fits-all cap would not be appropriate. Further, when looking at regional differences it may not be enough to assume all funeral directors in a certain region face similar costs, as urban-rural splits may be an important consideration for some cost elements.

**(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))?**

Our view is that a price control is a disproportionate and potentially ineffective and distortive remedy, and as such do not have detailed comments on the design of the regulation. However, there are clear differences in cost-bases across the UK such that a one-size-fits-all cap would not be appropriate. Further, when looking at regional differences it may not be enough to assume all funeral directors in a certain region face similar costs, as urban-rural splits may be an important consideration for some cost elements.

**(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)?**

In the absence of mandatory standards and quality regulation, price regulation could result in a "race to the bottom" if the price cap is set too low and firms compromise quality in order to save costs and retain a profit. This risk would be exacerbated if there is a delay between price



regulation (through CMA) and the setting up of a quality regulator and introducing quality regulation.

The Burial and Cremation (Scotland) Act 2016 provides for statutory regulation of funeral directors' back of house standards in Scotland, which we understand will be implemented by the Scottish Government in the near future. Our view is that, provided a Scottish regulator is in place before any price regulation comes into effect, the Scottish funerals market will be insulated, at least to some extent, from the negative impacts on standards and quality that price regulation could lead to.

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

**(i) implementation?**

**(ii) monitoring?**

**(iii) enforcement?**

We have commented on the overall effectiveness of price regulation in our response to (a) above. Here we expand on the major challenges we perceive in the implementation and enforcement of both options for price regulation, drawing out in particular the costs to the CMA / sector regulator.

The details provided to date make it difficult to determine the likely magnitudes of the costs. There are also no clear precedents where a regulator has sought to set a price cap governing so many firms offering products which are heterogenous. This further hinders attempts to quantify the likely costs.

#### Setting the cap

In setting a price cap of either a standard funeral package or the average revenue per funeral a firm can earn, the CMA will need to undertake careful data gathering and analysis, and also modelling to assess the impacts of any cap, in order to make the many decisions we have described in our response to preceding questions. For example, the CMA will likely have to clarify how it proposes to treat particular features that different funeral directors might propose as their standard funeral offering. For example, what shape and material for the coffin is acceptable, and to what extent does the funeral director have to defer to the wishes of clients on these matters while still charging to the cap?

There will also need to be transparency – all funeral directors, potentially in the thousands, that may be subject to the cap will need to be able to review the detailed proposals and costings that the CMA has relied on to derive the cap. To the extent that it only relies on data collected from a few funeral directors, the CMA will have to reflect on how this information might be scrutinised by other firms in the industry. When setting a cap on prepayment tariffs, the CMA allowed suppliers' economists and lawyers access to a physical discovery room where they

could monitor such costs.<sup>2</sup> That offer was in an industry where the number of affected parties was orders of magnitude less than in this case. Such physical discovery rooms may need to be set up in various places around the country, if all funeral directors' advisors are to be given a chance to understand how the proposed price cap has been estimated.

When developing the price cap, the CMA will also need to think about the extent to which it is reasonable to assume costs will be constant across regions and across time. In both instances, the CMA is likely to need to undertake detailed modelling to understand the factors affecting costs, to ensure that a cap is not untenably distortive.

Understanding how costs are expected to evolve over time may allow the CMA to save future costs of regularly updating the price cap, introducing a predictable rule instead such as CPI-x regulation. However, the CMA will need to satisfy itself that any updates reflect actual changes in the cost bases of funeral directors and not wishfully assume that costs in this sector always track with the general price level. For the larger cost elements, the CMA will need to review evidence on how these costs evolve over time and determine what indicators might be appropriate for these.

As alluded to above, we do not have enough detail to quantify how much it might cost to develop a price cap. However, we do know that most sectoral regulators expend huge resources when setting a cap. On the one hand, this may reflect the fact that they are setting caps that affect larger sums of money and apply to firms that have in-house regulatory teams tasked with pushing back against the regulator's proposals. However, the regulators (and affected firms) have accumulated experience of setting these caps over time, which means that they are not starting from the point at which the CMA would be starting if it tried to set a cap on funeral prices. It will also be setting a cap for many more firms than any regulator we are aware of having done. Moreover, the heterogeneity of offerings sought by customers is arguably much less in most regulated sectors, even those with relatively large numbers of firms, for example consumer payday loans.

### Developing policy

The CMA will need to gather the information to discover the numbers of funeral directors affected and then make a policy decision on whether the costs and impacts of the particular price cap outweigh the likely consumer benefit. It will have to conduct such analysis across all the component parts of the standard funeral package. Policy options vary, from setting a cap for the standard service that permits all funeral directors to recover costs when offering a standard service (albeit the cap will in many cases be non-binding and will do little to help financially disadvantaged people); set a lower cap but exempt some funeral directors from the cap (in which case who, and on what basis?); or set a lower cap and accept that some funeral directors' business models will no longer be viable. To choose between these options will require considerable data gathering by the CMA if it is to make an informed decision.

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<sup>2</sup> Paragraph 6.6, page 55. Ofgem (2018) *Decision – Default tariff cap – Overview document*, [https://www.ofgem.gov.uk/system/files/docs/2018/11/decision - default tariff cap - overview document 0.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/11/decision_-_default_tariff_cap_-_overview_document_0.pdf)

A key question is how many funeral directors would be at risk if a given price cap was set and applied to them. The FCA acknowledged that its cap on payday loans was likely to lead to 7% of customers no longer being able to access loans, and was presumably content if some lenders who 'specialised' in high interest rate loans went out of business.<sup>3</sup> The CMA will need to assess how many funeral directors may be driven out of business by a price cap, and determine what that would mean for the variety of choices available to consumers.

Opting for an average revenue cap is unlikely to significantly reduce the costs associated with setting its level and defining its features. If the CMA decides that the costs of some funerals will be excluded from the cap, then it will need to engage in the same exercise of defining precisely what services are captured by the cap and what costs for each component making up such a service are appropriate. It will also need to develop rules for accounting separation that funeral directors will have to meet.

The potentially simpler option of just using average revenue from all services will still need to set out rules for the treatment of any ancillary services that funeral directors offer that are outside the cap. It will also need to offer all funeral directors an opportunity to scrutinise the basis on which the CMA has determined the cap. As above, the CMA would then need to assess, as part of an impact assessment, how many funeral directors may be driven out of business and the implications for consumers of the changed market. With an average cap, the impact assessment will also need to think about how the mix of funerals offered into local markets might vary over time – a small funeral director that agrees to conduct a very expensive funeral early in the year may have no option but to offer cheap funerals for the rest of the year to comply with the cap. The CMA may have to undertake work to understand how varying the period over which averages are estimated affects the availability of different funeral options to clients.

### Monitoring and enforcement

Enforcement of the cap will also be a challenge. Again, it is difficult to think of many precedents where a regulator has tried to ensure compliance with a cap by so many firms. Perhaps the best example is the Payment System Regulator's oversight of compliance with the Interchange Fee Regulation, including the clause limiting the level of the interchange fee that issuing banks can charge to acquiring banks. Yet we suspect that the PSR has some important advantages to monitoring compliance with the IFR. First, it is overseeing a sector where firms are already subject to regulatory requirements (more typically overseen by the FCA), so they have staff familiar with handling compliance requests from a regulator. Second, affected parties may be more informed about the IFR and therefore those losing out from breaches – either merchants unhappy with what their acquiring bank is charging them, or acquiring banks with little or no issuing business unhappy about the level of interchange fee they are being charged – may serve as useful observers, alerting the PSR to possible breaches. In contrast, most customers using a funeral director are unlikely to be informed about the details of any cap on charges or how to make a complaint if they believe they have been over-charged.

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<sup>3</sup> FCA (2014) Press release, <https://www.fca.org.uk/news/press-releases/fca-confirms-price-cap-rules-payday-lenders>

The enforcement costs will again depend on the details of what the CMA proposes to do. It is possible that funeral directors will need to produce some form of audited statement demonstrating compliance with the cap. The costs associated with revising accounting systems and getting the numbers audited will depend on exactly what is required from the CMA, but it is by no means automatic that such costs would be negligible.

The scope to engage in mystery shopping in this sector to ensure compliance may be limited, and may be seen as in poor taste. Nevertheless, if the cap is to be effective the CMA will have to find some way of checking that it is working as intended. For example, if a funeral director reports that it offered no 'standard' funerals in the last year, does that reflect no demand for such funerals or was the funeral director not notifying customers of their availability?

If the CMA decides to exempt some funeral directors from complying with the cap, it will need to have a way of monitoring that all consumers have access to at least some directors subject to the cap. This will presumably involve geo-spatial modelling and maintaining an up-to-date database of all offices operated by funeral directors subject to the price cap. In extremis, the CMA may have to develop a mechanism to ensure that people in otherwise unserved communities have access to at least one funeral director offering a service subject to a price cap (or otherwise are able to secure funeral services at a price consistent with what they would have paid had one of the funeral directors in their region been subject to the cap). Designing such a system will be challenging, more so if an average revenue cap applies rather than a standard service cap. In the latter case, the CMA will have already set out what the service should entail and the price that should apply; with an average revenue cap, how will the CMA determine what price-service offerings would have been available to consumers in regions where no funeral director was subject to such a cap?

There will also be costs associated with publicising the price cap. Most funeral directors will be keen to maintain a high reputation and therefore not want to be found breaching a price cap. However, with 2,000+ funeral directors there is a real risk that some will be ignorant of the requirements. The CMA will need to make sure that they are all informed of the details and reminded regularly, especially when the cap changes.

The CMA may also want to inform consumers of the cap. Depending on whether the cap applies to all or just some funeral directors, and all or just some of the services offered by a funeral director, will influence how important such notification is. If all funeral directors are subject to the price cap requirements, then it may be possible to work with funeral directors on agreeing a protocol for how information on capped services is presented. This would of course impose a cost on funeral directors.

If the cap varies by region or business, then the CMA's monitoring costs may well be higher. In the case of a regional cap, there is a question of whether this will be set having regard to the premises of the funeral director or where the funeral actually takes place. The latter may potentially increase compliance and monitoring costs significantly, but the former runs the risk that competition is distorted with funeral directors advantaged over nearby rivals because of the postcode of their offices.

Finally, even if the cap included regular, automatic adjustments, from time to time it will be prudent for the CMA to revisit the cap to ensure it is working as intended and set at an appropriate level. This too would entail costs for the CMA.

**(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))?**

Please see our previous response about cost burden.

**(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))?**

As commented in our response to question (o), we do not think a price cap can be effectively and proportionately communicated to all parties, and that this would add considerable complexity and expense to both the CMA and funeral directors.

**(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?**

We have no further comment.

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

Our response to question (o) captures these costs. The largest burden will be that of a price cap distorting the market and leading to firms unable to continue offering their funeral packages within the cap, if the cap is set at a level that does not recognise the particular costs these firms.

Other costs could be significant – setting up systems for accounting separation and reporting would be necessary particularly if the cap is based on the costs of certain services over others; funeral directors may need to employ additional compliance personal or spend their own time ensuring compliance with reporting and with ensuring that billing and planning over funerals is in accordance with a cap.

**(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)?**

Our view is that a price control in a disproportionate and potentially ineffective and distortive remedy, and as such do not have detailed comments on what would constitute an appropriate implementation period.

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

We have highlighted the key risks in our response to the questions above.

## NAFD response to the local authority tendering remedy proposal

Having local authorities tender for contracts to supply funeral directors' services could distort the market if the LAs are able to use their buying power and the promise of large volume contracts to drive the price down below a level which is sustainable for smaller funeral directors with lower volumes. Funeral directors that do not win the competition to supply the local authority could be forced to increase prices in order to remain sustainable on a smaller volume of customers.

This could lead to a situation whereby customers who qualify for the LA-purchased funeral care pay low prices, but other consumers who do not qualify are forced to pay even higher prices than currently. This is effectively a subsidy from one set of consumers to another.

Further, using the prices paid for these local authority, large-volume contracts as a potential benchmark for the rest of the market risks setting price or revenue caps at an unsustainably low level.

Using local authority pricing signals would be particularly distorting, as these could be much lower due to the bargaining power of the local authority and bear little resemblance to actual cost of funerals. There is a danger of creating a similar, two-tier outcome to that observed with care homes, with those qualifying for local-authority care (priced funerals) effectively being cross-subsidised by other care home users/funeral buyers.<sup>4</sup>

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<sup>4</sup> See for example the report by Care England which found that fees paid to care homes by local authorities fall short of provision costs, such that self-funded residents are filling the revenue gap. <https://www.communitycare.co.uk/2017/01/25/care-home-funding-gap-will-result-divide-rich-poor-areas-providers-warn/>