

Funeral directors and crematoria services market investigation

Dignity plc final submission before the CMA's Provisional Decision Report

1. Introduction

- 1.1 Dignity plc (“**Dignity**”) welcomes the opportunity to make a final submission to the CMA before it reaches its provisional decision on whether there are adverse effects on competition (“**AECs**”) in the funeral services and/or crematoria services markets and, if so, what remedies may be appropriate.
- 1.2 This submission addresses the key issues that Dignity considers will need to be evaluated before the CMA reaches its provisional decision:
- (i) The significant market changes that have been underway in this sector over the past few years. The direction of travel in the sector, even before the impact of Covid-19 is considered, suggests that the CMA should be extremely cautious before reaching conclusions based only on data from 2014-2018. Data from 2019 and early 2020 should also be taken into account before reaching any conclusion;
 - (ii) The Covid-19 crisis, which has accelerated previously observed changes in the market and also exposed additional areas of concern, such as the need to maintain resilience in the sector. While the overall long term impact of Covid-19 on the funeral sector is unclear at this point, and some changes will be temporary, there will undoubtedly be others that are permanent – most likely in customer behaviour, expectations and experiences, as well as on the operating and capital costs of funeral operators;
 - (iii) If an AEC is identified by the CMA, the need for the overall package of remedies to be effective, reasonable and proportionate. Care should be taken to avoid any unintended consequences. It will therefore be critical for the CMA to market test its remedies effectively before full implementation.
- 1.3 Dignity does not consider that the case has been made for price regulation remedies, either in relation to funeral director or cremation services. Dignity notes that the CMA's profitability analyses for crematoria and funeral directors do not establish that the majority of either market earns excess profits. Further, for the reasons set out in more detail in its response to the individual working papers, Dignity considers that price regulation remedies are likely to be difficult to design and operate in practice, and that their introduction could lead to significant customer detriment.
- 1.4 More generally, Dignity's views on the various CMA working papers have already been set out in its separate responses.¹ However, Dignity notes that:

¹ Submitted on 27 February 2020 and 12 June 2020.

- (i) it may need to update its views on the working papers generally (in particular, but not only, the responses submitted in February 2020) as both the temporary and permanent impact of the Covid-19 crisis on the sector becomes clearer over the coming months; and
- (ii) it has not yet been given access to the CMA's underlying data that forms the basis of a number of findings and working papers that have prompted the CMA's remedy proposals. Dignity may therefore need to comment further, once it has been given such access, on whether the data and findings support the need for the remedy proposals being contemplated by the CMA.

1.5 Dignity therefore reserves its position and ability to provide further representations to the CMA during the remainder of the investigation.

2. Significant market changes in the sector in recent years

2.1 There are a number of significant market changes that have been underway in this sector for some time and need to be taken into account, including:

- (i) **Decrease in funeral director fees in real terms:** Surveys from SunLife (once corrected for the weighting biases identified by the CMA) and Royal London show that funeral director fees have fallen in real terms in recent years. Findings from the CMA's own analysis of price trends show a marked change between the periods 2013-2016 and 2016-2018, with most funeral directors experiencing below inflation fee growth in 2016-2018.² Dignity's own experience is that its funeral director revenues fell further in 2019 and 2020. Dignity's economic profits, even on the CMA's preferred approach of calculation (which Dignity considers underestimates capital employed), have halved between 2016 and 2019.³ Funeral director fees have therefore not risen in real terms.
- (ii) **Pre-need purchases:** With the growth of pre-need sales (and also potentially a further boost in consumer demand pursuant to the FCA's proposed oversight of this segment), consumers are making decisions in relation to funeral arrangements in advance when there is more time for them to research options and make an informed choice (see Figure 1 below).

² See Table 1 of the Dignity response to Funeral Directors CMA working papers dated 20 and 21 February 2020, which summarises findings from the CMA's own analysis of price trends of the three largest funeral directors, three regional Co-ops and 13 larger funeral directors presented in the Funeral Directors pricing levels and trends working paper. For instance, the CMA found that the compounded annual growth rate (CAGR) of the average funeral revenues (AFR) of the three largest funeral directors was 5% in the period 2013-2016, reducing to 0% in the period 2016-2018.

³ See paragraph 4.3 and Figure 3 of Dignity's response to the CMA's working paper on Funeral Directors' profitability dated 20 February 2020, submitted on 12 June 2020.

Figure 1: [REDACTED]⁴

[REDACTED]

As the CMA has noted, Dignity's average total revenue per funeral for pre-need plans⁵ is lower than its average revenue for at-need sales (by c. £[REDACTED] in 2018),⁶ for the reasons explained in detail by Dignity in its response to the CMA's request for information.⁷ The growth of the pre-need segment would therefore also impact the overall profitability of Dignity and other providers across the sector.

- (iii) **Greater demand for bespoke and tailored funerals compared to fixed packages, which will impact funeral costs and profitability:** [REDACTED].
- (iv) **An increase in digital activity and engagement by customers:** Consumers are increasingly searching for information on funeral directors and crematoria online and comparing options (see Figure 2 below). Funeral directors and crematoria are responding to this by making better quality information available online on pricing and facilities.

Figure 2: [REDACTED]⁸

[REDACTED]

There are also some price comparison websites operating in this market. Dignity however notes that there is scope for further improvement in this regard through industry-wide measures mandated by either the trade associations or the CMA.⁹

- (v) **Growth of simple funerals and direct cremation services:** These options are gaining in popularity and social acceptance by consumers, partly due to a decrease in religious content at funerals over time. The CMA has recognised that direct cremation is likely to grow further as a proportion of all funerals.¹⁰ As the CMA has acknowledged, consumer research has found that, once consumers

⁴ [REDACTED].

⁵ In this context funeral plans only and not funeral benefits, that are charged and accounted for differently.

⁶ CMA's RFI dated 29 May 2020, Question 3 (Funeral Directors).

⁷ See Dignity's response to CMA's RFI dated 29 May 2020, Question 3 (Funeral Directors), submitted on 19 June 2020.

⁸ [REDACTED].

⁹ [REDACTED]. Co-op also relaunched its website in 2019 to include more information on prices and options.

¹⁰ Working paper on international comparisons, paragraph 55(a).

are made aware of direct cremation as an option, 42% would consider it for their own funeral.¹¹

Figure 3: [✂]

[✂]

Note: [✂]

The growth of low-cost funerals is expected to continue as consumers become increasingly aware of the options available to them and accepting of low-cost options as equally dignified and respectful alternatives to traditional funerals. Further measures to improve the information available to consumers to enhance their awareness and understanding of their options, would likely accelerate this shift. Dignity notes in this regard that direct cremation providers are not limited by location and exert a nationwide competitive constraint on “traditional” funeral directors and crematoria operators. Further, an increasing number of low-cost funeral providers now offer a national service via the internet.

- (vi) **Evolution of new business models and alternative funeral types:** In addition to the growth of direct cremation operators, there are now also service providers who focus on only certain aspects of a traditional funeral service, allowing customers to choose options that suit their budget and preferences. For example, some funeral directors are offering attended services at their funeral homes or in standalone chapels, coupled with a direct cremation (see for example Fosters Funeral Service in Glasgow, and Dignity in Swansea); and GreenAcres Group offers “service-only” cremation services, holding services at its six memorial parks throughout the UK (such as Kemnal Park) followed by a direct cremation at a third party crematorium.

- (vii) **Increased market entry in crematoria services has provided a competitive constraint:** Over 50 new crematoria have opened in the UK since 2008, enhancing choice and competition. The CMA’s analysis in the working paper on ‘Crematoria: evidence of competition between crematoria’ shows that entry has had a significant and sustained negative impact on incumbents’ cremation volumes. Indeed, Dignity has explained in response to that working paper how the CMA’s analysis in fact materially underestimates the effect of entry.¹² The competitive constraint provided by new entry or potential new entry would be stronger if the CMA addresses the delays and conflicts in the planning regime (that act as a significant barrier to entry at present). Conversely, price regulation of crematoria would severely disincentivise new entry, so reducing the competitive constraint provided by the threat of entry.

¹¹ SunLife Cost of Dying Report 2020, page 13: <https://www.sunlife.co.uk/siteassets/documents/cost-of-dying/SL-cost-of-dying-report-2020.pdf/>.

¹² Dignity’s response to the CMA’s quantitative analysis of entry in the crematoria market dated 30 January 2020. Dignity’s main concerns with the analysis can be found at paragraphs 1.3 – 1.6 of its response, submitted on 12 June 2020.

2.2 The analysis above shows that the market was organically responding to consumer demands for more choice and lower cost funeral options, even before the CMA market study was launched in 2017 and is undergoing a transformation that addresses many of the concerns raised by the CMA in its market study findings. These changes are relevant to whether there are any current features of the market that result in an AEC. If the CMA identifies an AEC, the potential remedies under consideration should be tested to ensure that they are effective under the current and changing market conditions and that they do not have unintended negative consequences on the sector.

3. The impact of Covid-19 on the funeral sector

3.1 The funeral sector has witnessed extraordinary disruption due to the Covid-19 crisis. This has brought into sharp focus: the essential nature of the services that are provided by the funeral sector; the value that is placed on them by society as a whole (not just the immediate customers of the funeral directors and crematoria); and the resilience of the sector, which has continued to provide services to customers in a respectful manner under very difficult circumstances.

3.2 At the date of this submission (in mid-June 2020), the sector is still facing:

- (i) a need to provide a significantly greater number of funerals and cremations in 2020 compared to the same period last year and the average over the last five years;
- (ii) an inability to offer certain services where the infection transfer risks are too high and/or where social distancing requirements cannot be maintained e.g. viewing of the deceased, embalming, limousine services, and face to face meetings with customers at branches;
- (iii) a need to adjust or limit other aspects of the service in light of social distancing requirements, for example limits on the number of mourners at funerals;
- (iv) increased costs, for example relating to the inflated cost of personal protective equipment (PPE), an increased delay between the date of death and date of funeral leading to increased storage requirements, and other adaptations to mitigate the risk of infection transfer (such as installing perspex screens in limousines to enable social distancing requirements to be maintained); and
- (v) decreased average revenue per funeral, given that it has not been possible to offer full funeral service options during the lockdown period and also due to further active customer switching to simple funerals and direct cremation options.

3.3 Whilst Dignity hopes that some of these constraints will be lifted in due course (e.g. restrictions on the number of mourners), some of these changes are likely to become permanent and will accelerate the shifts in the market highlighted in Section 2 above. For example, families that have arranged or attended funerals (in person or remotely by video link) during the pandemic period are likely to have experienced a different approach to funerals, with arrangements being made by phone or online, limited physical attendance

at the funeral service and the possibility of a later memorial service or celebration of the deceased's life. These consumers will likely draw on these experiences when arranging funerals in the future – influencing the nature of funerals even post-pandemic.

3.4 In particular, Dignity expects to see:

- (i) An increasing number of customers looking for funeral services online, enabling quicker and easier comparison between providers;¹³
- (ii) Greater customer awareness about, and use of, lower cost funeral options and direct cremations (see Figure 3 above); and
- (iii) An increased recognition that different aspects of a traditional funeral can be split, by holding a memorial service or celebration of the deceased's life (with a wider range of location options) at a later date, sometime after the cremation or burial of the deceased. This may well result in lower revenues per funeral where the family opts for a smaller scale initial funeral service or even a direct cremation.

3.5 These changes will need to be reflected in the CMA's analysis, in deciding whether there is any AEC and, if so, what remedies may be appropriate, proportionate and effective.

3.6 The Covid-19 crisis could also have implications for the way funeral operators develop in the future. In particular, it could have implications for the appropriate size of branch networks, investment in other means of communication with customers (with increased use of telephone and online resources) and drive a greater diversity in product offerings. There is however not enough data available yet to assess other long term shifts in customer behaviour and how the funeral sector may need to evolve. Dignity reserves its position on these longer term impacts and, if it is able, may wish to provide further input in this regard during the course of the CMA's investigation.

3.7 The industry has worked hard to carry out its essential services during the Covid-19 crisis, and Dignity is proud of the role that its own staff and businesses have performed as part of that response. The sector as a whole will need to be on standby to deal with any future similar events; maintaining resilience in the sector is therefore vital. Dignity expects that risk management for future pandemic outbreaks will become a greater priority for funeral directors and reinforced by Government as an essential public policy consideration so that the sector is again able to deliver additional services at short notice in the future, should the need arise. Imposing price regulation under any circumstances could reduce incentives to entry and discourage innovation and investments in quality.¹⁴ In the current

¹³ Dignity has experienced that online sessions on its website almost doubled in the period January – May 2020 compared to 2019: more than [§] visits in January – May 2020 vs. around [§] in the same period of 2019. Dignity and customers in general also adapted to making funeral arrangements over telephone (compared to in-person meetings).

¹⁴ See Dignity's responses dated 12 June 2020 to the CMA's working papers on remedy options for regulation of funeral services and crematoria pricing.

situation, these risks are magnified given the significant changes the funeral industry is facing.¹⁵

4. If the CMA identifies an AEC, the overall package of remedies must be effective, reasonable and proportionate

4.1 If the CMA does identify an AEC, the CMA needs to ensure that the remedy package as a whole is:

- (i) **effective** at remedying, mitigating or preventing the identified adverse effect on competition (“**AEC**”) or any detrimental effect of the AEC on consumers. The CMA also needs to ensure that the different elements of the package work together to achieve the desired outcome, and are practicable; and
- (ii) **reasonable and proportionate**, being no more onerous than is necessary to achieve their legitimate aims and not producing disadvantages that are disproportionate to their aims.

4.2 The CMA has put forward a number of different remedy options in its working papers. Some may be considered to be effective, reasonable and proportionate on an individual basis, but if the CMA proceeds with a package comprising multiple options there is a risk that the package as a whole could ultimately be ineffective and disproportionate. For example, an overly-inclusive package could burden consumers with too much information; unnecessarily increase costs of compliance for the industry; make the regime cumbersome or difficult for consumers to engage with; and ultimately be unnecessary to deliver the market change that the CMA seeks to achieve.

4.3 The potential AECs that the CMA has considered in its working papers in the funeral director and crematoria sectors are predominately demand-side issues. In particular, the CMA suggested that weak demand-side constraints in the market for ‘at need’ funeral director services in the UK has meant that prices have historically been higher than a competitive level.¹⁶ The CMA has not identified any concerns involving market power for funeral services, which could enable pricing significantly above cost in the long term. In crematoria, the CMA similarly has suggested in the working papers that demand-side constraints are weak, with very few customers comparing crematoria options at present.¹⁷

¹⁵ Dignity refers to the analysis by Amelia Fletcher, University of East Anglia, published on 29 May 2020, *What should we do about price gouging?*, available here: <https://coronavirusandtheeconomy.com/question/what-should-we-do-about-price-gouging>. She notes that in the context of emergencies, price regulation can have important negative consequences (even in addition to the normal concerns that price caps inhibit the natural market process whereby higher prices act to bring supply and demand into balance).

¹⁶ Working paper on “Funeral director sales practices and transparency”, paragraph 15: “[t]he CMA Market Study identified that customer vulnerability, and difficulty engaging, were potentially major factors in enabling funeral directors to charge high prices.”

¹⁷ Working paper on “Crematoria: evidence on competition between crematoria”, paragraph 3: “very few customers compare crematoria, and for the few customers who do, the attractiveness of buildings and grounds and location/proximity are the factors most frequently compared on, whilst price and other aspects of quality (such as facilities available) are less important”; and paragraph 23: “Responses to the Market Investigation consumer survey show that very few customers shop around - only 7% of customers compared two or more crematoria. A further 31% of

- 4.4 If the CMA identifies any AECs in the funeral director and/or crematoria sectors, Dignity believes that the most appropriate, effective and proportionate remedies would be those that address the root of the demand-side issues, namely, information and transparency remedies, combined with quality regulation to ensure minimum standards of service, and a greater focus on early arrangement. The remedies should also be tested before being introduced to the market, to ensure that they are effective in achieving the desired outcome. In particular, the CMA could consider:
- (i) Steps to make the increased use of online sources to find funeral services sustainable in the long term, for example by ensuring that information provided online and on the telephone is adequate, includes all mandatory charges and is easy to compare. This would make it easier for customers to compare a number of operators quickly even when under time constraints, intensifying competition and allowing customers to make more informed choices.
 - (ii) Ensuring that customers that are not visiting branches in person (or are doing so to a lesser extent) post-pandemic, still have opportunities to gauge some of the front of house quality differentiators between providers; for instance, greater transparency online about features such as type of cars used and viewing facilities. While there are already price comparison sites for this sector, these need to be improved to ensure that they are objective, display accurate information on prices and the services offered, and provide sufficient information on quality so that they do not provide misleading information to consumers.
 - (iii) Addressing a likely increased interest in pre-need plans through sufficient controls and oversight of the distribution of such plans. The FCA is expected to address some of these issues but the CMA could meaningfully use its powers to ensure relevant intermediaries (like care homes, will writers etc) are encouraging customers to consider funeral needs well in advance and pointing them towards the right resources.
 - (iv) Ensuring that strong downward pressure on funeral director prices does not translate to a reduction in quality standards back of house, which are not observable by consumers. As their funeral mix changes, with increased use of simple funerals and direct cremations, funeral directors expect to face a downward pressure on average revenues along with an upward pressure on costs (for instance to improve infection control processes), resulting in decreased profitability. As a result, the need for quality regulation of back of house services may become more acute to ensure consumer protection.
- 4.5 Dignity does not consider that the case has been made for price regulation remedies, either in relation to funeral director or cremation services. For the reasons set out in more detail in its response to the individual working papers it considers that these are likely to be difficult to design and operate in practice, and that their introduction could lead to significant customer detriment. This is particularly (but not only) the case given the

customers have a choice of crematorium but did not compare. The remaining respondents did not feel they had a choice of crematorium (see paragraphs 13 and 14)."

considerable uncertainty over the future shape of the sector given the market changes already underway and the ongoing impact of the Covid-19 crisis referenced above. The past few years have already seen a decline in average revenues and profits in the funeral sector. During the Covid-19 crisis, to the best of Dignity's knowledge, there were no instances of price gouging or profiteering by funeral directors or crematoria. On the contrary, providers were able to continue to provide services at the same prices (or reduced prices where certain elements of the service were not offered)¹⁸ despite there being an increase in operating and capital costs on account of expensive PPE materials, investments in temporary mortuary facilities, agency fees to cover labour shortages and increased infection control processes. The CMA should accordingly exercise particular caution before interfering with the way funeral services and crematorium services are priced.

¹⁸ Dignity in particular also offered rebates on pre-need funerals where Dignity was unable to offer services that were paid for in the package (such as limousine hire) due to health and safety limitations.