

Competition and Markets Authority
Funerals Market Study

12th June 2020

Dear Sirs

I write on behalf of Freeman Brothers Funeral Directors, in response to your working papers and the remedies therein.

Firstly, I would like to tell you a little about our business.

-Freeman Brothers started trading in 1855 in premises which we still occupy in Horsham, West Sussex.

-We have three further satellite branches in Crawley, Billingshurst and Hurstpierpoint in West Sussex, the latter of these having opened this time last year after we acquired and fully refurbished the premises.

-We are descended from the activities of a general builder and carpenter, who carried out funerals as one of his many activities. The current proprietor is a direct descendent, and his son, the sixth generation of his family to work in the funeral industry, also works within the business.

-I manage the company day-to-day, having been recruited to my role around thirteen years ago.

-We carry out in the region of [X] funerals per annum. We operate our own pre-paid funeral plan held in Trust; [X]; we have collected Deceased people on behalf of the Coroner's service since before there was even a tender process for such an activity.

You will, on 27th February, have received our comments on the working papers released on 30th January. Herewith our comments on the papers released 20th and 21st February. We have a few general comments about these which we will outline before providing our comments on each paper separately. Please note that comments made on our customer trends reflect pre-COVID-19 practice. We will submit a separate document in respect of COVID-19 under your call for other submissions, prior to the deadline of 19th June.

We feel the literature we have been asked to digest and comment upon in a challenging period for our trade is extremely lengthy and that many of your target audience will find it overly complex. We are concerned that this will lead to a lack of engagement from smaller independent funeral directors who comprise the major part of the market, and that the result of this will be the CMA making decisions without being able to take into account viewpoints from varied types of businesses across the sector.

We have not addressed the papers on crematorium pricing specifically, but for your interest would note that we are located equidistant between the Surrey and Sussex Crematorium (operated by The CMG) and Worthing Crematorium (operated by Worthing Borough Council). Worthing Crematorium's current price is £995.00 (a 95% increase in ten years). The Surrey and Sussex Crematorium's current price is £1070.00 (an 80% increase in ten years)- this price has not increased in two and a half years, following a 7% increase in September 2017.

We would make the point, as we have in our previous two submissions, that the crematorium is always paid for their service, whether by the DWP in the case of a client who qualifies for that assistance; the Local Authority for an Environmental Health funeral; or the funeral director who then typically asks to be reimbursed by the family. The funeral director is their client, but in cases where there is a gap between what the family is willing to pay in terms of the crematorium's fee and what

the crematorium proposes to charge the funeral director (for example, in situations where there is felt to be a poor level of service and any discount offered by the crematorium is felt to be insufficient by the family), it is the funeral director who often suffers a loss in revenue as they will pay the crematorium's bill and deduct the difference from their part of the overall bill.

We would also state, as we did in our submission in 2019, that if the CMA is truly interested in areas of funeral service which are uncompetitive, there should be an examination of burial fees. A bereaved family can 'shop around' for a funeral director and change their crematorium of choice if the funeral is a cremation. For burials where an already-purchased plot is to be opened- especially if this is for the second burial- there is no ability to find a cheaper-priced offering. Operators of cemeteries and burial grounds can set (and increase) their fees unchallenged, including doubling or even trebling them for non-local residents in spite of the fact that there is no additional work done to justify an extra cost. This section of the customer-base is an entirely captive market and to not examine the one area where there is no scope for competition on price seems derelict in the context of suggestions of private businesses being price capped. Our local cemetery, Hills Cemetery, operated by Horsham District Council, has increased its interment fee by 256% in 20 years, with a further 3% increase introduced on 1st April. Several years ago, they doubled their fees overnight with no prior notice.

We will discuss this in more detail in the relevant papers but we feel the aims outlined around capping of the outlined 'benchmark' package by funeral directors and the possibility of Local Authorities tendering for low-cost funeral packages are not complementary and risk distorting the market by creating a lack of provision for funerals whose requirements fall between the 'low-cost' LA and 'benchmark'.

General Observations on document 'Funerals market investigation- Updated overview of key research and analysis'

- We would not be averse to a quality regulation regime as outlined in point 98 of this document.
- However, we must stress the need for any regime to be proportionate and not place an unfair burden on smaller businesses. We would suggest that it is the larger players in the market whose past actions have been most transgressive. Smaller players obviously have less ability to carry out any actions whose impact can be felt across the market and we feel it incumbent upon us to point out that these larger players are also best able to cope with any onerous remedy which is a consequence of a market shaped by them - as opposed to smaller players who would be harder hit. Therefore, smaller businesses are at a risk of suffering a double detriment if a new regime is introduced with which compliance is difficult, when this is a remedy for a situation not of their own making.
- We would agree that the scope of services as outlined in point 99 is reasonable, with the exception of point b: 'appropriate education and training, including continuing professional development (CPD)'. We find it hard to understand how 'appropriate' can be determined for non-technical roles, especially as the wide variety of businesses within the sector mean there are a variety of roles, some of whose duties will overlap.
- We would argue that, in the event of the introduction of such a regime, all firms should be obliged to participate in an ADR scheme as outlined in point d.
- In reference to point 105, we would argue, as we have done previously, that the funeral sector is competitive, although perhaps less so on price than on factors like service, which firms working in the industry have found is of importance to their customer base. The funeral industry is not comparable with industries such as energy, which are suitable for regulation due to the similar offering of the product being sold. It is more comparable to the hotel sector, in that there is a wide

range of service providers and pricing options, and products may appear on the surface to be more similar than may actually be the case. We offer the following example as an illustration of this.

-A simple internet search carried out in February for accommodation within two miles of an SW1V postcode found an available range at prices from £24 to £1035 for a one-night stay.

-We do not believe that anyone would suggest that, because the option exists to stay in that area for £24, prospective customers should not pay £1035 for a different type of accommodation should they choose to.

-There are four Premier Inns within the same radius of SW1V as outlined above; there are over 450 hotels in the area which are cheaper than their most expensive offer, yet Whitbread, which operates under the Premier Inn brand, claim their central London performance is strong and actually offsets worse performances elsewhere.¹ (It is interesting that there does not seem to be any concern about a national hotel chain operating in this manner, while evidence of the funeral sector potentially acting in an equivalent manner is frowned upon.)

-All the accommodations at their various price points offer a place for their user to stay for the night. We understand a hostel offering a bed in a shared room (for £24) is providing a product which is not identical to the Premier Inn's offering, and that neither of these are equivalent to a luxury suite at £1035 per night. It might, however, be argued that an accommodation service is less variable at the most fundamental level than a funeral might be- the hostel may be less suited to a particular customer's needs, but still provides a bed to sleep in. A direct cremation is never going to serve someone who requires a Requiem Mass in the local Catholic Church followed by a horse-drawn hearse to the local Cemetery. Yet variation within accommodation provision and pricing is accepted without question.

-We would argue that customers who compare hotels are not only making comparisons on price. If they were, review sites which focus on quality would not be ubiquitous, or Premier Inn so successful. That other factors have their place in consumer choice does not mean a lack of understanding of the existence or causes of pricing differentials, merely that priorities lie elsewhere.

-To return to Premier Inn, one of their key selling points is consistency- each room is decorated in the same way, each mattress is the same, each breakfast offering and so on. Therefore, for customers who view a comfortable night's sleep as a priority, the money that they will pay for a Premier Inn room in excess of that for which they can obtain a cheaper type of accommodation is presumably considered well-spent for the peace of mind which they derive from the knowledge that their purchase has been made with this aim in mind. This is directly analogous to a client's practice of using a funeral director from whom they have had previous good experience, rather than shopping around. Premier Inn's branding around consistency of approach obviously works for them and proves that cost is not the only factor even in markets where price is arguably very easy to compare, and there is arguably less variation in provision than in the funeral sector (as outlined above).

-We do not see any proposed legislation which seeks to reduce the price of the £1035 luxury suite to the price of the hostel, or indeed the Premier Inn- we believe it is accepted that, in spite of the fundamental similarities, there are differences in provision, and that not all of these are tangible or can be judged objectively. Whether the differences in provision justify the differences in cost is for the customer to determine when selecting from the range of options available. Presumably, no-one who had the money for the £1035-a-night suite would stay there if they felt the Premier Inn was of equal standard and value. We know a high price does not guarantee a good service, but we would suggest that it is impossible to provide a top quality service without this being reflected in higher pricing in both the accommodation and funeral sectors, and we feel customers whose priorities tend towards

¹ <https://www.whitbread.co.uk/~media/Files/W/Whitbread/report-and%20presentations/2020/q3-fy20-trading-update.pdf>

the very high levels of service should have their wishes respected by funeral directors in the same ways that they would be by hoteliers.

-We do not believe it is a regulator's place to say that a customer who wishes to pay more to stay in a Premier Inn because they derive peace of mind from believing they will get a good night's sleep is making a poor choice, on the basis that they could shop around, 'take a punt' on something cheaper but ostensibly equivalent at the most basic level and then hope that the service is analogous and they did not make a mistake. Incidentally, such an approach also mitigates the desired effects of the customer prioritising peace of mind initially.

-We do not see any proposed legislation which suggests that the purveyors of the luxury suite should also cater to those customers for whom the hostel's price- or even the Premier Inn's- is more accessible.

-We do not see any proposed legislation which suggests that, because some providers of accommodation can offer a service at one cost, that this means all providers can- or should- do the same.

-The main difference between customers of hotels and those of funeral directors may be the willingness to compare and the need to make the purchase. However, this is not true in all cases- some hotel stays will be driven by necessity rather than choice (for example, to attend a funeral at a distance) and some customers of funeral directors will be less compelled than others (solicitor-Executors, social workers, distant relatives). Even if this was not true, the lack of engagement within the funeral industry is symptomatic of a lack of willingness in many quarters to engage at an early stage with issues around death, dying and one's own mortality (and that of one's family and friends). We do not believe proposals outlined in these papers will increase this lack of customer engagement.

-We believe, as we will outline throughout, that measures such as a price cap could indeed have a detrimental effect by removing choice and therefore distorting the market.

General Observations on Document 'Funerals Market Investigation- Funeral directors pricing levels and trends'

-We would suggest that the data outlined in points 41 and 42 shows the 'independents and others' have been far less problematic in their policy to price increases than larger firms. That Dignity and the Co-Op were able to allow their prices to 'stagnate' from 2017-2019 (once scrutiny of their practices commenced) shows they must have inflated their prices previously to enable them to continue to operate such large organisations without additional increases. The more consistent increases by 'independents and others' suggest pricing strategies based far more on operating costs than profiteering.

-Point 44 outlines that professionals and others' fee growth rate was approximately 0.5% above RPI. This is entirely consistent with our expectations as the largest driver of costs for a business such as ours is staff wages. We would consider it fair to give staff a pay increase 0.5% above RPI. In a sector where high quality of service is important, this ensures we can attract and retain the best possible staff. [✂] -Point 138 suggests that independents are seeking to undercut the national competition and that pricing is a 'dark art'. The reality is that the firms they have been competing with (chiefly Dignity) have been pursuing a business model based on higher prices but lower percentage market share which in turn has enabled low (volume) branch offices to be viable. We submit that since Dignity's pricing strategy has enabled branches to operate handling a lower number of funerals, in many small towns and villages this has enabled competition to flourish- albeit in terms of quality not price.

General Observations on document 'Funerals Market Investigation- Funeral Directors- price dispersion analysis'

We have no observations other than highlighting paragraph 20, in which it is stated that ‘the analyses... do not take into account potentially relevant differences between funeral director services in quality or cost in each local area’, which leads us to question the necessity to include such analyses. We also submit that adjustments made to Dignity and the Co-Op’s prices render the data outdated and therefore invalid.

General Observations on document ‘Funerals Market Investigation- Funeral Directors: Profitability Analysis’

It is our view that this paper contains fundamental flaws that undermine its usefulness in drawing meaningful conclusions.

-Point 29 tells us that the 13 largest firms cover 42% of all branches in the market. This leaves 58% of branches (the majority) operated by the ‘smaller’ funeral directors. According to footnote 4 this would appear to represent 63% of market share. The financial data you cite for these can be described as less than robust. In point 178 you state that ‘smaller funeral directors were largely unable to provide robust balance sheet information’. This speaks volumes for the quality of financial data/accounting ability of the firms in question and casts serious doubts around the accuracy of other data you have harvested. Point 182 states ‘We note that some firms have ARF figures which appear too low to credibly include disbursements. Some firms showed ARFs of less than £2,000 across the period, which we believe to be exclusive of disbursements, and have therefore been excluded from our further analysis’. Are we therefore to believe that the inclusion of data has been decided upon by an arbitrary cut-off? We feel that an absence of quality data undermines the process for determining figures for this major cohort of the sector. We believe that a proposal as extreme as price regulation should not be proposed without significant further research to produce a data set in which there can be more confidence. We cannot see any evidence of an ability to be confident about net profit levels of this key sub-sector and, as such, cannot see how it can be claimed with any level of certainty that price regulation would not drive such companies out of business.

-It is not clear why you have included disbursements within the charges levied by smaller firms. Their inclusion (and wide variability) will inevitably add to a lack of clarity. Our nearest crematorium charges a fee of £1070.00. Adding doctors’ fees (£164.00) and an officiant (around £200.00) means that our locally payable sum is £1434.00. As stated elsewhere in this document our average wage cost for staff per funeral is in the order of £[§]. We then read at point 218 ‘However, during our investigation we have attended several site visits with smaller funeral directors who have told us that they provide funeral packages including disbursements for around £2,500’. [§]. There is not enough detail provided to be able to determine whether ability to carry out a funeral at any given cost is evidence that such funerals are actually occurring. Any business can choose any amount of money at which they may carry out some of their services, if their ability to do so is achieved through cross-subsidisation. We could say that we can carry out a funeral at no cost other than disbursements, for example, but while this might be true, we would not be able to maintain a viable business if we did so in every instance. Without detail as to the contents of such packages, it is impossible to analyse their viability, and we also lack sufficient information to understand whether these are widely taken up by the relevant business’ customer base.

-The report takes a simplistic approach to goodwill/brand names and focuses only on how intangible value may be acquired within the context of larger firms. This leads to a failure of understanding as to how intangible value develops within the context of the smaller firms and why, therefore, this goodwill/brand name is of value when acquired by larger firms and should indeed be considered when calculating returns on capital. It is our belief that the document defines ‘goodwill’ and ‘brand name’ in ways that lead you to make a technical differentiation between them. We contend that in funeral businesses these terms are virtually synonymous and certainly linked inextricably and by

various complex means. For the average small firm (if not every small firm) the value of goodwill/brand name is not a measure of how much has been spent on marketing (over and above the 'norm') during an initial 3 years but intangible value from proprietors having 'gone the extra mile' (year after year after year) that will eventually lead to future custom and is certainly not reflected in the current year's profit. As for any entrepreneur the reward may come upon the sale of the business as deferred salary/pension in exchange for the blood, sweat and tears that are expended in a life of self-employment. A little background may help you to understand the life of a self-employed funeral director in this statement from Freeman Brothers' current proprietor:

"My father was a 4th generation funeral director. My parents lived modestly, indeed my father lived in the same house in which he was born for some 60 years. My mother gave up a nursing career in order to be 'on-call' to help out in the office on busy days. Often, she would drop everything at home when an unexpected family called at work to arrange a funeral. Holidays were almost non-existent and in a pre-mobile-phone era I remember during one rare holiday my father phoning the office from a public call-box every day to 'make sure everything was OK'. Dinner-table conversation often revolved around work. Receiving five phone-calls regarding funerals on Christmas Day? It happened. On-call every other week? My childhood was structured around it. Did my forebears get a measured monetary reward for every hour they worked? No, they didn't- but instead they built up a business with a strong customer loyalty because our clients could rely on us getting things right."

As your reputation grows, so too, hopefully, does turnover. In our case more than 100 years of growth have taken place from the same premises. [X] where does your ROCE approach allow for self-employed effort- since extra profit gained through increasing market share runs the risk of being labelled "excess"?

-Establishing a successful funeral directing business is a lengthy process and is not well-suited to the 'get-rich-quick' entrepreneur. Funerals are an infrequently-purchased item but we do consider that your approach to 'books of customers' at point 86 and 87 needs reconsideration. Whilst there are no ongoing contracts we have countless customers who return to us to arrange funerals for different relatives. One well-arranged funeral can lead to a happy customer who may not need to return for 10, 20 or even 30 years more, but who will feel reassured in choosing the same firm, even at such a length of time, if they have to arrange a subsequent funeral. No-one criticises the 'need to sleep well' customer who automatically visits the Premier Inn website upon finding he or she needs to find somewhere to stay in an unfamiliar town. Why, therefore, are bereaved people felt to be making foolish choices when they return to their previous positive experience of their prioritised criteria-excellent service? Why is the peace of mind afforded to bereaved people by using past experience in their decision-making, unimportant?

-Many of the branches owned by the 3 largest firms started life in a similar way to Freeman Brothers. When sold it is entirely logical that there should be a- sometimes considerable- sum paid for goodwill/brand name. Prior to a sale, that goodwill is rarely recognised on a balance sheet, but afterwards we can see no justification for it not being included within the assets of the purchasing company, and being taken into consideration when rates of return are calculated. Could we respectfully suggest that if your modelling does not recognise the value of intangible assets within the funeral profession then the parameters of your model need to be re-examined?

-In respect of point 84, if brand names and goodwill are devalued then there is the potential that independent funeral directors- who have always planned to earn a limited salary during their lifetime in the expectation that they will have a valuable business to support them in retirement; or to pass the business down in due course for their descendants to potentially do the same- will become disengaged. This could ultimately lead to an erosion of choice for customers if they decide to exit the market sooner rather than later. There may be future business owners who don't make the choice to enter the market as they see no ultimate incentive in doing so. Both of these would lead to significant distortion of the market.

-We note that footnote 9 (on page 15) refers to paragraph 14 of Annex 8 of the Competition Commission's 2013 'Guidelines for Market investigations' document. The footnote on this document states that these criteria come from a further CC report pertaining to banking services to SMEs. We would query how this is analogous. We would suggest, with respect, that use of such a non-compatible comparison model shows a lack of understanding of how a funeral director adds value to his or her business and therefore why larger firms have been prepared to pay substantial sums for goodwill.

-We assume footnote 15 (page 19) outlines three different respondents' comments. We would suggest to quote these as authoritative is a mistake when at least one shows evidence of what we would consider to be poor practice. It also deliberately contradicts the CMA's own assertion that 'good standards' include the ability to provide refrigerated storage. We do not understand how a company can operate and serve a broad sector of the market without any of their own facilities- for example, even if the Deceased person can be kept elsewhere and all of the arrangements made in the customer's own home (which would have implications under the Distance Selling Regulations), where are the viewing facilities and, if elsewhere, would this be satisfactory to the customer? This may be a direct cremation company but otherwise we do not understand how they can operate and don't think this comment is a fair reflection of the demands of the majority of customers.

-On the specific point in this footnote that a firm might only require 'four or five funerals a month to break even'- this may be true, but what price is being charged to achieve this? Such a comment is meaningless without this knowledge. We doubt the CMA would endorse a business charging double the local competition's price in order to achieve a break-even point with very little work.

Notwithstanding this, Chart 11 on Page 48 shows a year-on-year decline of average funerals per branch for larger firms (whether through competition or declining annual deaths) and given the largely fixed overheads of a funeral branch some degree of compensatory price inflation can be seen as inevitable unless branches are to close with a concomitant reduction of consumer choice. We are furthermore interested that this chart shows an average of 88 funerals per branch for larger firms (just over 7 funerals per month). If 5 funerals per month is considered to represent a break-even point then one would suppose that branches carrying out 7 per month are not generating obscene levels of profit.

-At footnote 15 on page 19 the final sentence states 'it is possible to break-even while doing only four or five funerals per month'. We infer from the use of the word 'only' that this is deemed to be an easy target to reach thus trying to underpin the argument that it is easy for anybody to open a funeral branch and to soon be making a profit. It is not. In our experience, opening a new branch and arranging 5 funerals a month- in a saturated market-place- is a difficult target to meet. We would like to add a case study from our own experience [redacted].

It would be a mistake to assume that opening a branch in a heavily-populated city is any easier. Most urban areas are well-served by existing providers whose clients, (let us not forget) are already experiencing a high level of customer satisfaction. There are very few locations indeed where a funeral director can open a new branch and easily begin to arrange 3 or 4 funerals per month, let alone 5 or more. It is for precisely this reason that high-turnover branches have been bought by large groups for premium prices. It gives them not 3 years of marketing costs but decades of established trading history.

-We note the EBITDARS analysis commencing at point 185 but would suggest that any analysis which doesn't include staff costs is unrealistic for funeral businesses. We assess our staffing costs to be in the region of £[redacted]. We genuinely cannot understand how funeral director 13 in table 15 operates. We seek to provide a high quality service and to accommodate customers' wishes by- for example- having sufficient staff [redacted]. Insufficient staffing means that once the popular 'peak-time' slots are booked, other clients are given the choice between a deferred funeral or a booking at a more anti-social time. Irrespective of what causes staffing costs (whether it be through quality of service,

economies of scale or assessed by an industry outsider as 'inefficiencies') we do not think that a profession characterised by huge numbers of owner-operators can have any meaningful analysis of profit when staffing costs are effectively ignored.

-One way to reduce staffing costs is to rely on informal, cash-in-hand 'hired bearers' who tend to operate to varying degrees of efficiency from many crematoria. This may reduce costs but leads to all kinds of potential issues which may lead to customer detriment: the hiring firm does not know who they are and has no control over what they wear or the level of their skill. There is no guarantee that they have any particular level of training, it is doubtful that they are insured; the lower costs include the hirer's abdication of responsibility to contribute to a pension or pay employer's NICs. Firms which operate in this way are not comparable to business like ours, [X]. We would suggest there comes a point at which lower costs can only be achieved through poorer practice and to imply that this is something to be aimed for is unsatisfactory and also presents a contradiction to the suggestion that standards are important and should be raised.

General comments on document 'Funerals Market Investigation- Cost of capital analysis'

-We would firstly state that the proprietor of Freeman Brothers, a Cambridge graduate and capable mathematician, feels that he is not the target audience for information presented in this way, and that if it is in any way relevant to your analysis it- and the implications thereof- should be explained in a way that will be comprehensible to the independent funeral directors who comprise the largest share of the market in question.

-We feel that this kind of data is relevant to the operation of a big business but not to the analysis of smaller firms, whose primary goal is customer satisfaction and aiming to continue to develop on a steady, rather than shareholder-fuelled increasing-growth trajectory.

General Observations on document 'Funerals market investigation- Remedy options for regulating the price of funeral director services at the point of need'

-We fail to understand how a price cap of one 'benchmark' service will increase competition. We do not understand what prevents firms charging the capped or maximum price for the benchmark service by default, therefore distorting the market by removing the variation in cost which must exist between firms.

-We can foresee that businesses may feel the need to increase the price of services outside of the 'benchmark' package if the cap is set at a level which means it detrimentally affects their revenue, increasing costs for those families whose requirements are outside the benchmark.

-Regardless of the content of the package, any package is only suitable for a percentage of families. We can foresee client dissatisfaction if it is felt that a package unsuitable for their needs is offered as a default.

-We believe that the CMA's predecessor, the OFT, took a dim view of NAFD members' historical practice of offering a set (simple or basic) funeral at no more than an agreed cost, as this behaviour was seen to be creating a cartel. We fail to see how the passage of time has altered this principle.

Responses to specific questions within the document

101. Aims and approach of a price control remedy

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

-No. We do not understand how a price control regime as proposed will be monitored.

-As outlined above, we do not understand how this will increase competition.

-We feel that the steps which will need to be put in place prior to the introduction of such a regime- locating all businesses which offer funeral services, a registration (and probably licensing) process, will in themselves be time-consuming and costly, and that these costs will need to be passed to funeral businesses which will lead to them increasing their charges. There is also a risk that some businesses may decide they do not have the capability to comply and exit the market, removing client choice and leading to distortion.

-It is inevitable that there will be a difference in quality of service even within a 'benchmark' package where the components are the same. Comparable pricing between firms offering different service levels may be counterproductive in leading customers to believe they will receive equivalent service between two firms when, in fact, the opposite may be true.

-If this regime is introduced in line with quality measures, there will be no incentive for firms to offer better than the bare minimum standards at the cheapest possible cost in order to maximise profits, which may have the consequence of leading overall standards to fall due to a lack of incentive to aspire to best practice.

(b) Do you agree that the introduction of a price control remedy to be (sic) 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?

-Whilst we welcome suggestions that a regime will be proportionate, we would draw your attention to our comments above. We believe these are clear disadvantages of the type outlined in point 19d.

-It is clear from the data that the major advocates of higher pricing are Dignity and the Co-Op. We feel their market share has decreased as a result, and that their awareness of this has led to them adjusting their prices in response. We contend this is an excellent example of a free market in action.

Price control design considerations

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

(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)?

As we disagree with price control in principle, we are not able to respond to these questions. However, we would say that any application of price control has potential to distort the market in the ways we outline throughout our responses; a lack of level playing field in such a regime would only exacerbate this undesirable effect.

(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)?

-We disagree with price control as a principle but concede this approach is less problematic than the provided alternative.

-There are significant problems with such a proposal including:

- the ability to take into account variation in demography/cost of living even in areas at relatively near proximity to one another;

- the fact that, as outlined above, different providers will still offer different quality of service within the components of a 'benchmark' package;

- a lack of consideration as to the implications for all customers who find some- or all- of the 'benchmark' package to be unsuitable for their needs.

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

We do not, for several reasons:

-Collection of the deceased- if this is unlimited, small firms will face disproportionate costs as they face additional costs for staff to collect outside of standard working hours while larger firms do not. An out-of-hours team will comprise at least three people- one to deal with telephone calls and two more to attend the call-outs. A small firm receiving one call-out per week will have to allocate all

those staffing costs to their single client. A larger firm may be able to share the costs between 20 clients.

-It is arguable whether viewing should be included. The difference between preparing someone for a funeral without viewing and for a viewing can be significant in terms of time and required expertise, particularly if the implication is that viewing requires embalming (see below). Viewing is one example of the significant regional differences which funeral directors experience. In our firm, ten years ago, [X]. However, we know that colleagues in other firms in other areas of the country have consistently high levels of viewings which are not changing over time.

-Funerals are becoming less standard and more individual and the idea that any package will be suitable for a majority of people is a fallacy; if the market continues as we expect it to and the range of people's requirements increases, any package above the bare minimum becomes irrelevant over time anyway.

-We have concerns about the implications of explaining to customers why something they want isn't 'standard' and that client dissatisfaction will follow if we are obliged to offer as a default something which is plainly unsuitable for their needs.

-Our experience of our pre-paid funeral plan, which we sell in five tiers, is that some customers are willing to haggle over included components of packages- which is why we do not sell packaged at-need funerals outside of a simple package. If customers' ability to customise packages is met with resistance, they may feel poorly-served, especially if insufficient monitoring of a price control regime means that not all firms adhere to the same degree. Firms which trade under absolute compliance may well be at a disadvantage compared to those which take the risk of continuing as before and only making token efforts towards the offer of the prescribed package.

-There is a disadvantage in the stated 'benchmark' funeral package for those who require simple arrangements. There is nothing in these measures for those who fall into this category who cannot afford any type of funeral.

(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?

-Some communities have cultural requirements towards large and ostentatious funerals. This 'benchmark' will not be suitable to their needs and so firms which cater mostly to these demographics will find the need to offer this package superfluous.

-Similarly, any firm which offers only 'cremation only' services will not be able to offer this service as it is in excess of their offering.

(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)?

Yes, as follows:

-One limousine- use of limousines is steadily decreasing. [X]. As funerals become more informal, the popularity of a cortege decreases. The importance of the reception is increasing, so there is less of a need to return directly home after the funeral.

-Embalming- the increasing popularity of funeral venues (e.g. natural burial grounds) which do not allow for it means that those clients have a service included which they will never use. [X]. It should be noted that:

-not all companies (especially smaller ones) have access to an on-site embalmer and so would face costs if they were obliged to offer it as a matter of course.

-Some proprietors of some firms disagree with embalming as a point of principle and, while we do not agree with this stance, we acknowledge it is often sincerely felt and feel it is unfair to challenge such a principle, especially as they would dispute the necessity of embalming on any basis.

-It should not be suggested that embalming is necessary for every funeral.

-We have sold our own pre-paid funeral plan for 30 years. The components of the 'benchmark funeral' were, at the time of the plan's inception, exactly what we offered in our most basic tier of three. Over time, this has altered and it became our middle tier of three, then penultimate of four. It is now our fourth of a five-tier plan. We design our plan in response to feedback from customers and believe that the 'benchmark' funeral outlined contains components not required by many of our customers.

-[X]. Many people whose requirements are otherwise very simple express a wish to have one [a limousine], while people who require far more complex funerals do not necessarily want one.

(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))?

-As outlined above, we would say that services should not be available on a '24/7' basis unless the cap reflects the additional costs incurred in this for extra staffing costs. Smaller companies would be more likely to be detrimentally affected if this were not the case.

-Some very small firms may choose not to respond outside of certain times and may instead subcontract and compelling them to do so may have the inadvertent effect of driving them out of the market. For example, we are usually able to respond to collection requests within an hour and some smaller local firms ask us to collect people on their behalf as they do not have the staff to provide anything like this level of service, even within working hours. The level of staff required to offer such a standard comes at a cost- but also means that for the high percentage of people who do not wish for the Deceased person to remain in their house for any length of time, we are better able to meet their requirements.

-If viewing were to be included (which we would not necessarily countenance), we would again suggest it would be limited to ensure that the cost of having a staff member available for this service at all times did not disproportionately affect the smallest firms.

-We understand viewing rates and availability vary to an extreme degree, dependent on local custom. We [X]. This shows how unsuitable any standardised level of service is. Further, compelling a business to introduce and fund a service (paying someone to be available for out-of-hours Chapel visits, in this case) which is unnecessary only adds to the costs for that business.

29 (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)?

-We cannot see how this is possible when there is significant variation between disbursement prices. We are equidistant between two crematoria where the difference in their price is £335.00 for a service up to and including 10.00am. This means a cremation with no minister or doctors' fees can cost £735.00 at one Crematorium, and one with both doctors' fees and an officiating minister factored in can be in the region of £1440.00 at the other.

-It is unfair to ask a funeral business to bear the cost difference between two third-party providers if the family chooses the more expensive one. This may also have the unintended consequence of funeral directors only recommending cheaper crematoria, distorting the market, which presumably would be of concern.

(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))?

-We find it hard to understand how this would work as it discriminates on a regional basis and against those operators who have chosen to specialise in the better-quality end of the market.

-This will be harder to monitor in larger companies than smaller ones, which seems contradictory as the evidence suggests it is the larger companies who have inflated process and caused any resultant market distortion.

-If the CMA feels that a focal point for prices has a risk of distorting the market, then why is it being presented as a suggestion in any case?

(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))?

(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))?

-Notwithstanding our objection to any such system, we would feel it should be applied nationally, with regional variation in price to take account for the cost of living.

-We would, however, query what determination would be made as to a 'region' and do not see how this is able to work in practice. Wherever a boundary is placed, there will be people who are both positively and negatively- but always unfairly- affected. In extreme situations, businesses could relocate a mile down the road to place themselves in a different region.

-How would business costs factor into this and what would the relationship be between this regionality and outgoings- especially for multi-region businesses who could conceivably have staff and vehicles working across, and premises in, more than one?

Implementation, monitoring and enforcement

(o) What is your assessment of whether the option of setting a maximum price for a benchmark package of products/services (paragraph 60) is capable of effective; (i) implementation? (ii) monitoring? (iii) enforcement?

-We do not see how this system can be monitored either as a whole or in component parts.

-We suppose that enforcement is theoretically possible- if issues are discovered, but see the ability to discover such issues as a significant impediment to the efficacy of any enforcement regime.

-We think implementation is theoretically possible, assuming every funeral business can be tracked and communicated with but we do not think this is presently possible as we believe not every business (particularly small ones with informal local arrangements) is known to the authorities.

-We understand that the previous incumbent of the Scottish Inspector of Funeral Directors role did not believe that it was possible for her to inspect all Scottish Funeral Directors and there are more firms proportionately in England and Wales. A body such as the NAFD and/or SAIF would have to carry out the inspections but we believe this would not be possible for them- and would not account for the lack of compulsion to be a member.

-It seems to us from the evidence provided by the CMA that some firms have had difficulty in presenting their basic financial information- which should act as a warning as to how difficult this activity might be.

-We are unsure what the costs of such a regime to a business might be but we have significant concerns that it would be both easier to implement and more cost-effective for larger firms. We would also be worried that some firms would escape classification e.g. where a business mostly carried out another type of activity, but facilitated a small proportion of funerals through historical connections or similar.

(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))?

Notwithstanding our comments above around the likely efficacy of any system, and our disagreement therewith, we would feel everyone should have to report, but that reporting should be more onerous for larger businesses.

(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?

-We find it of significant concern that price regulation is being envisaged without a concurrent communication strategy upon which there can be comment. If it is not known how- or if- such information can be effectively communicated, then price regulation surely cannot be considered as feasible.

-As we have stated throughout, the significant challenge is communicating any regime to consumers as without their direct engagement and willingness to engage on price, the creation of any system has little meaning.

-We would also suggest that, as a system such as this will only be effective through monitoring, it is premature to talk about communication strategies when there is, as yet, no indication that monitoring thereof will be effective and achieve its desired aim.

In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 94(c))?

-We do not wish to be flippant but we would suggest that if consumers were willing to engage with funeral directors on price, then larger companies would not have been able to increase prices as they have. It is necessary to take a step back and first ask how consumers can be encouraged to engage with the concept of funeral costs, which we believe requires them to engage with their own mortality and that of their families. This will take years and a major shift in attitudes to death. We believe that a significant minority of people will never wish to consider these matters.

(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?

-This would depend on how onerous the regime was.

-Many small independent funeral directors would find the concept of a regulated environment completely alien, especially those who had spent their whole lives in the funeral industry.

-We believe some very small firms may not even be computerised and so the collation and reporting of this information would potentially be impossible for them.

-There is also a significant possibility of a lack of skill-set both to carry out the reporting but also to operate in a regulated environment and monitor own activity in this context.

-We can envisage that some businesses may need to seek specialist advice in this respect and we wonder about the likely costs of this to them and whether these will prove a disincentive to continue trading.

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

-We believe the costs would be significant.

-We think the largest cost will be in effective monitoring and would repeat our point above that this is essential to the system having any efficacy.

(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)?

-We think this timescale would be too short, considering the likely timescale for legislation; development of framework (including significant further research with a much larger quantity of firms covering all sizes in all geographical locations and serving all demographics); recruitment and training of personnel to operate the monitoring system; research and classification of all funeral businesses; communication of the regime to them; lengthy public information campaign; trial period during which the system's staff are acting as advisors rather than regulators and so on.

-It may be more realistic to consider the system commencing a phased introduction in 7-10 years with achievement of its aims following in the 5-10 years following that.

-It should be recognised that, when two family members die in relatively quick succession, it is very normal for the remaining family to choose funeral arrangements for the second of these which are very similar to the first- especially if it was perceived that the person who has died most recently had been involved in the arrangements on the prior occasion and had made choices with which they would also be content for themselves. Most funeral directors established for any length of time will have taken phone calls whose content is '(Mum) died six/twelve/eighteen months ago and now (Dad) has sadly died, you carried out (her) funeral and now we would like the same for (him).'

Sometimes, the first death will have been longer ago, possibly many years, but there is often still a wish to provide something equivalent where that is possible and there have not been alternative choices made in the intervening time. This means that any system introduced cannot be done so at

such a rate or in such a way that its influence upon present choices seems to disparage those previous ones. It cannot be right for bereaved people to be told that the perfectly legitimate choices that their father made a few months ago when their mother died were not suitable or satisfactory, and that he was somehow misled and not well-treated by her firm of choice, and so that now that she has died the recommended options are very different- even if everyone were completely satisfied with the choices that he made. Any regime which rests upon the contention that previous arrangers of funerals- including those who may since have died and whose arrangements were made on an equivalent basis- have essentially made an expensive error which could have been prevented had they had the foresight to carry out comparisons (which they would have seen no necessity for as price was not their main consideration), will be one which drives bereaved people to feelings of guilt, shame, and regret. We contend it is not morally right to tell people that the reasons for their having made such a choice were the wrong ones, or to suggest to them that they are foolish if prior experience is more of a driver for their choice than present cost.

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

Our comments are largely as outlined above but we would add the following points:

-There is nothing in these proposals for people who cannot afford a funeral at all, and in fact those requiring the simplest and cheapest funerals may be disadvantaged by a system in which all propositions- other than the standard- see an increase in cost by firms who seek to recoup losses they encounter by the unprofitable nature of that standard.

-There is a risk that the offering of a standard package at a single price- rather than providing the cost of component parts- sees firms charging more for those component parts when they appear outside the standard package. This may in turn lead to erosion of client choice as packages outside the standard (which will never be suitable for everyone) become less attractive. Further to this, the Local Authority Remedy, which we will discuss separately in more detail seems to specifically refer to lower-cost funerals and we are unsure why there seems to be no measure in place which proposes consumers can access a lower-cost funeral from their chosen funeral director provider.

-We also wonder if the CMA has considered that this type of regulation may seriously alienate many independent funeral directors, and that they may then choose to retire and/or cease trading. This will give greater scope for larger firms to dominate the market.

-We also wonder if the CMA has considered that the above consequence may have been the intention of larger groups (who we know feel better equipped to deal with price regulation), as a secondary benefit of their increasing prices.

General comments on document 'Funerals Market Investigation- Local Authority Tendering remedy proposal'

-We feel it is very important that Local Authorities should not be able to structure any tender or contract any firm in any way which enables them to abdicate their responsibilities to arrange funerals under the Public Health (Control of Disease) Act 1984, which makes clear that this is their duty.

-We are aware of scenarios in our local area where Local Authorities have sought to compile lists of private providers who will carry out a funeral without a deposit and place these on a 'recommended suppliers list', giving these to families who seek recourse from the Local Authority for a funeral. This is unsuitable for many reasons, not least because it places consumers who presumably do not have funds in a position of becoming debtors and, if they subsequently cannot pay any or all of the funeral, the business itself may well have to increase costs to other clientele to cover such losses. Eligible consumers and private companies should not be put at debt risk through abdication of statutory responsibility.

-Consumers also should not be discouraged from accessing Local Authority support for a funeral by that Authority's deliberate structuring of their proposal in an unattractive way, as we know happens in part of the UK. It is shameful that some authorities insist that their Public Health funerals are unattended or refuse bereaved people access to the cremated remains in an attempt to make them a less attractive proposition.

-Additionally, we are unclear as to why low-cost funerals are being talked about in this remedy instead of in any price cap by funeral directors. While we feel that for many reasons, outlined elsewhere, a price cap is unsuitable for the funeral market it would seem self-evident to us that, if it were to be introduced, anything other than a cap on the simplest possible proposal only serves to render it further unsuitable, because there is still no guarantee that those with both the simplest requirements and least resources would be more likely to be able to access a product which meets their needs.

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 (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.

-We feel the stigma attached to Local Authority funerals (for example, the insistence in some sections of the press to continue with the outdated term 'Pauper's Funeral') would be a significant disincentive to consumers accessing this resource.

-As mentioned elsewhere, we feel packages are generally becoming less appropriate as needs become more diverse and people with lower financial resources should not feel unable to access a more bespoke service- especially as funeral directors have the experience to suggest meaningful and cost-effective ways to personalise funerals.

-As we have repeated in discussing the previous remedy, we feel the many disadvantages of this remedy render it disproportionate.

Please answer with respect to each of the implementation options available, that is: (i) a CMA Order applicable to all LAs; (ii) a CMA recommendation to LAs; (iii) a CMA recommendation to central government(s) that it/they should create a statutory responsibility on LAs.

-Notwithstanding our objections to this proposal, we feel any framework should ensure parity across Local Authorities to ensure people in near proximity to each other are not subject to different eligibility criteria.

(b) How should the specification of the funeral product to be provided under a LA scheme be determined? (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.

-We struggle to understand how such a Local Authority scheme would address funeral poverty, as this already exists to a measurable level in spite of the extant Public Health funeral system, which supposedly exists for situations where no-one is 'willing to pay'- note, there is no mention of availability to pay². It would be more appropriate for the CMA to suggest that the Social Fund Funeral Payment was sufficient to pay for a funeral and had an index-linked increase.

- We feel the addition of the Local Authority into the marketplace will complicate matters for bereaved people and will not address any of the supposed problems which this remedy seeks to solve.

ii) How much scope, if any, should there be for variations between LAs?

-None. All authorities should offer the same scheme.

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

² <https://www.local.gov.uk/sites/default/files/documents/public-health-funerals-20-dca.pdf> page 5

-As previously mentioned, we have significant concerns about such a scheme being used by Local Authorities to abdicate their statutory responsibilities.

(d) What are the current barriers to LAs establishing tendered low cost funeral schemes (eg available resources, other priorities, not regarded as a LA responsibility, etc)? How might they be overcome?

-It is our understanding that, when the introduction of Medical Examiner fees for England was being debated, it was the position of Local Authorities that their staff (in this case, Registrars) did not have the skills to discuss or collect such costs from bereaved people and thus expected Funeral Directors to do so on their behalf. We are unsure what has altered in the meantime which means that these same authorities will now have staff with this supposed expertise.

-Not all Local Authorities have bereavement care teams and so such a system will require the recruitment of new staff, which we believe will be unpopular with Local Authorities at a time when their budgets are under more scrutiny than ever before. For example, our local District Council's Environmental Health Officer with responsibility for Public Health funerals has just retired. His was a full-time position and he has not been replaced; instead, his responsibilities have been added to one of his colleagues whose expertise is in Licensing.

-If, as previous CMA papers imply, standards (both in terms of service and facilities) should be of utmost importance when a funeral is arranged, then it is contradictory to suggest that Local Authorities can provide analogous services without the simultaneous ability to provide suitable premises and highly-trained staff.

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

-Having (relatively) recently successfully tendered for our local Coroner's Removal contract, we can testify that the complexity of such a process places smaller businesses at significant detriment. We believe without the expertise of our senior staff- obtained outside of the funeral industry in prior careers- our tender would not have been successful, and that equivalent businesses without such expertise would face barriers to entry. This is especially true of the requirement to produce written policies, which the smallest businesses do not require, and costly insurances whose cover may go far beyond what is otherwise required.

-Tendering is also time-consuming and costly for Local Authorities.

(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?

-If the funerals were of a fixed requirement then they would only be used by those who needed that type of funeral, which we would suggest will be an ever-diminishing pool of people as requirements diversify.

-Families who have a long-established connection to a private firm may still wish to use them.

-We feel this might lead to a two-tier system where people who have requirements for a simple funeral then lose any ability to personalise it and feel discouraged from using their local firm of funeral directors who may be more able to meet their needs.

-We do not see anything in this remedy to show how those families using the Local Authority provision would be guaranteed to receive a good quality service in practice.

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

-We gather that at least one Local Authority advertised its scheme as 'affordable' at a certain cost when local private companies were offering similar packages at lower prices.

-This also raises questions as to the basis of any tender. Would it be on the lowest-cost proposition or the best tender? It may be that the provider best able to provide a low-cost funeral (either to the highest standard or at the lowest of all costs) is not successful in winning the tender and therefore the Local Authority's option may not be the cheapest available, which defies the object of such a scheme. Equally, many Local Authorities may find the idea of tendering solely based on price distasteful, and there would be concerns about a 'race to the bottom', with service levels inevitably

being affected if price was the key factor. It does not follow that families who have simple requirements will accept lower levels of service as a result of those requirements.

LA tendering as basis for price benchmarks

(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? Other comments (j) Please provide any other relevant comments or observations on these proposals.

-We feel that Local Authority tendering prices would be based on the expectation that a given minimum quantity of work would be received to cover fixed overheads. It is unrealistic that the prices quoted for such a tender should be used to benchmark private funeral prices since there is no guaranteed turnover for private funerals.

-We are concerned by the suggestion in point 30 that someone who has died unexpectedly is somehow more appropriate to receive a LA funeral than someone who has not. People die unexpectedly in a variety of circumstances and there may well be plans in place for a funeral already; suggesting something else is appropriate may muddy the waters. It could be suggested that someone dying unexpectedly renders their family more vulnerable than might otherwise be expected and so they may be susceptible to suggestions of using a particular service, which is a significant risk- especially if they subsequently find it unsuitable. It may well be that those funerals where a person has died unexpectedly a) require more staff time and effort to guide the family through the processes needed and b) are more likely to fall into the 'high levels of personalisation' category and so we would question the wisdom of trying to place these people by default into a simple option where they are given the bare minimum which is less likely to be suitable.

-We have already expressed the opinion that tendering systems advantage larger businesses and we believe this is borne out by the fact that many of the Coroner's removal contracts are carried out by Dignity and Co-Operative Funeralcare. If they successfully tendered for Local Authority funeral proposals and so held both tenders, this might represent a significant conflict of interest and would also enable their staff to promote their Local Authority funeral at the time of collection.

-We feel larger companies would benefit from Local Authority tenders. As well as the other points already mentioned, it should be borne in mind that a larger company would be able to devote the time and resources to tendering nationwide, should they choose to- including in areas where their market share was not significant. The subsequent success at the tender would necessitate a larger presence in such an area, where otherwise they did not attract similar custom. This could lead to the cross-subsidising of their operating costs by funerals falling outside the Local Authority schemes and other distortions to local markets, as well as strengthening their national market share with resultant distortion on a large scale.

If there are any questions arising from our comments and answers, or if we may be of assistance in any other way, please don't hesitate to contact us. The details are in the signature of my email account from which this was sent.

Yours faithfully

Freeman Brothers Funeral Directors