

FUNERAL MARKET INVESTIGATION

WORKING PAPER ON INFORMATION AND TRANSPARENCY REMEDIES

CO-OP RESPONSE

1 Introduction and Executive Summary

- 1.1 Co-op broadly welcomes proposals set out in the Information and Transparency Working Paper (**Paper**). As we have previously stated, Co-op believes that there is scope for improvements to practices in the funerals sector. Co-op has proposed a number of potential sales practice and transparency remedies in the course of the market investigation¹ that we believe will improve price, quality and service to customers.
- 1.2 The CMA's proposed high level combination of increasing access to information, promoting comparison and creating space and opportunity for families to consider their options are progressive moves in the right direction. Efforts to break down the taboos around death and measures to prompt earlier planning and consideration of funerals, again must be welcome. Much of the detail of the remedies set out in the Paper will require careful consideration to implement proportionately and effectively.
- 1.3 Notably, we believe families should have easy access to information on funeral directors, their services and prices as well as information on crematoria options. We think how this is achieved requires careful thought. With the number of funeral directors in the market, some of which are small family operators, any information platform would need to be easy for funeral directors to access and update as well as easy to use for the consumer. Poor design, or an overly complicated approach could drive poor decision making at worst, or lead it to irrelevance if it is too difficult to use. For a variety of reasons, including the need to discuss and understand arrangement options and customer welfare, the nature of funerals means that for most funerals, it is unlikely that a customer would wish, or should complete the customer journey online without an arrangement meeting. We anticipate that a platform will therefore primarily operate as a source of information prior to discussion with a funeral director, rather than a mechanism to navigate all the possible choices available or as a means to buy a funeral. These considerations should inform the design of any such platform and so the extent to which a high degree of granularity and complexity is useful. As the CMA has noted, the remedies consulted on in the Paper are likely to be part of a package of broader remedies that must work as a whole. This is important for a number of reasons:
- (a) The proportionality and effectiveness of any remedies need to be considered in the round. The package proposed in the Paper is, in itself, comprehensive and would represent substantial change for the sector. As we have indicated previously, some action to improve transparency and access to information for customers is likely to be helpful. However, in the context of a sector where consumers confirm, time and again, that they are very satisfied with the service they receive, where there is a range of market participants, sustained entry, and where prices and profitability are dropping, substantially additional, more onerous remedies, including price regulation, would be disproportionate.

¹ In the response to the Issues Statement; at the hearing and follow-up letter; and in a Submission 'Discussion of potential non-pricing remedies' on 7 November 2019

- (b) The proposed elements of any remedies must interact and work together. For example, remedies that increase the quality of services must be implemented alongside and to a large extent, at the same time as remedies to increase information and transparency so that customers can clearly see the links between quality and price. Equally, effective remedies that improve transparency and consumer engagement may mean that more intrusive remedies for price regulation are not needed.
- 1.4 The CMA's decision to publish extensive remedies working papers before setting out its conclusions on any adverse effect on competition it believes may exist, has not permitted us to fully consider the CMA's proposals in the round. It has made it challenging to comment on the workability of the CMA's potential package of remedies, its effectiveness in addressing potential concerns or its proportionality. Consequently, whilst we have sought to provide comments where possible, Co-op reserves the right to make further comments as and when we better understand the CMA's evidence base and conclusions arising from it, as well as the extent of the overall remedies package proposed and the interrelationships between the various remedies under consideration.
- 1.5 In taking steps to address potential concerns in the funerals market, the CMA must remain mindful of the evidence that it has collected confirming that consumers, time and again state that they are very satisfied with the service they receive, including in relation to price; that there is a range of market participants with sustained entry and that prices and profitability are both dropping, in some cases substantially. As the CMA has recognised, customers in this sector are vulnerable and grieving. Existing working practices have evolved to deal sensitively with those customers at a difficult time and to ease the challenges for those customers as far as possible. The impact of proposed remedies must therefore take into account the impact on customer wellbeing of the experience of arranging a funeral. We would therefore advocate in favour of testing proposed changes to current customer-facing practices before implementation.
- 1.6 The CMA should also consider a staged approach to the introduction of remedies. Our view is that the evidence does not support a finding of an adverse effect on competition to which price regulation of any form is a proportionate remedy. However, if the CMA were minded to consider it, it would be more proportionate to first implement transparency and sales practice remedies and only then allow a relevant regulatory body to reassess whether a price control mechanism is needed. This would be less confusing and manageable for customers, who might otherwise find new practices and change confusing and would be more proportionate for a sector comprising many small providers (to manage the substantial changes). Our view is that in large part, the CMA's analysis is a backward looking snapshot at a point where the sector is in the process of change. Trends in pricing and profitability have reversed and our view is that, reinforced by proportionate remedies, these changes are likely to be sustained, such that price control, with all the risks of unintended consequences it entails, will prove to be unnecessary.
- 1.7 Failure to comment on a particular element of the CMA's analysis should not be read as acceptance of it.

Our responses to the specific questions set out in paragraph 28 of the Paper are set out in the Schedule to this response.

2 Proposed Remedy 1 – Price transparency and comparability

- 2.1 In broad terms, a remedy that increases price transparency and comparability of funerals to help customers make better decisions must be welcome. However, to make a remedy effective there are trade-offs between requiring enough information to make fair comparisons,

without requiring customers to be overwhelmed with so much information they cannot assess and manage it. The 2018 Oxera report 'Disclosure in at-need funerals' demonstrates why consumers are particularly vulnerable to information overload at the first point of contact with the funeral director (e.g. due to grief).² For example, the CMA's 2018 consumer research found that consumers used decision-making short-cuts (which are often used when consumers struggle to compute large amounts of information).³

'When deciding who to use locally, respondents typically used short-cuts to expedite decision-making, that is, pragmatic but also perceived low-risk strategies for making a choice of funeral director.'

2.2 Furthermore, information overload can cause unintended consequences. For example, consumers, when faced with too much information, may focus on a single easily-understandable metric rather than computing the true overall cost to themselves. The Oxera report concludes that:

- a) information disclosure must be designed to aid effective consumer decision-making, taking into account the way consumers make decisions;
- b) few customers effectively use detailed price information in decision-making; and
- c) simply presenting all of the information is not likely to be effective - consumers do not typically review and absorb all information before making decisions.

2.3 Our Submission 'Discussion of potential non-pricing remedies' on 7 November 2019 sets out a number of information and transparency measures we believe will be effective, proportionate and enforceable. We are open to seeing those developed further and believe there is some merit in a number of the CMA's further suggestions, but as we have indicated, the workability of remedies in the round needs further, more careful consideration than the CMA's consultation process currently permits.

2.4 With that in mind, we observe the following in relation to elements of the remedy set out at paragraph 32 of the Paper.

Provision of information at first point of contact (paragraph 32(b)):

2.5 We do not believe a mandatory requirement to provide pricing information, particularly extensive pricing information on first contact, is likely to be in the best interests of customers. Customers' first contact with a funeral director can be very soon after the death, with the CMA's survey finding that the deceased is taken into the care of a funeral director within 24 hours in 54% of cases and within 3 days in 71% of cases.⁴ In the great majority of cases, first contact is therefore very likely to be very shortly after bereavement. Whilst some customers may be prepared to engage in discussions about price at this early stage, others will find a discussion about costs inappropriate and distressing. There must therefore be an element of judgment exercised by the funeral director at rather than a mandatory engagement on costs at a prescribed time.

² Oxera (2018), 'Disclosure in at-need funerals'.

³ Research Works (2018), 'Qualitative Research Report', October, para. 4.3.5.

⁴ Consumer Survey, Table 10.

- 2.6 The evidence of consumers being locked into use of a particular funeral director is not strong. In our view, the finding that 11% of customers switched after the deceased was collected, in circumstances where a large proportion of customers have contacted a funeral director with a clear reason to prefer them⁵, with only 2% choosing a funeral director because the deceased is already in their care suggests that barriers to switching are low in practice. An intrusive remedy, likely to cause distress, is therefore unwarranted at this stage in the customer journey.
- 2.7 We believe that a number of other remedies proposed by the CMA more proportionately and effectively address residual concerns about ensuring that customers have the opportunity to consider and reconsider their choice of funeral director. If:
- a) as the CMA proposes in Remedy 5, there is a cap on charges incurred for collection, transportation and storage of the deceased so that switching costs are minimal; and
 - b) as proposed in Remedy 4, customers are prompted to consider whether they are content with the price quote that results from the arrangement meeting,
- there will be a clearer opportunity for customers to reflect on what their options are and what would meet their needs.
- 2.8 Should the CMA nevertheless consider progressing this kind of remedy, we believe it should be tested through some form of pilot study to assess whether and how it would work. Any such study must include smaller funeral directors who are less well-resourced to manage new processes but nevertheless deliver the majority of funerals.

Provision of disaggregated pricing and service information (paragraph 32(d))

- 2.9 As we have noted, provision of more information is not always helpful to customers and to promoting better choices. For example, the FCA states that *'Information alone is not sufficient to empower consumers to make informed choices as different people engage with information in different ways'*.⁶ As the remedy is developed, choices will need to be made on the optimal balance of information to be made available to customers.
- 2.10 In our view, provision of pricing information for elements of the core service, which would not in practice be broken down, goes too far and is likely to be unhelpful and confusing. It would not usefully add to transparency to disaggregate pricing to the level of (i) collection; (ii) transportation; and (iii) storage as these will always be part of the funeral service, along with preparation of the deceased, funeral services in arranging the funeral etc., which have not been identified as separate elements to be disaggregated. In the context of Remedy 5 (considered further below), it is important for customers to know up front what charges on transfer would be, and that they are at an appropriate level, but that does not require presentation of those charges in a disaggregated form.
- 2.11 Conversely, for elements of the funeral where there are a range of options available (e.g. a choice of cars, different coffin options etc.) more information may need to be provided to allow for like for like comparisons. We see funeral directors' websites as a helpful way to provide standardised information which families can review in their own time and which also give the customer a good sense of the kind of qualitative service they will receive from that funeral

⁵ either because of past experience (39%) or a recommendation (39%)

⁶ Financial Conduct Authority (2016), 'Smarter Consumer Communications', FS16/10, p. 5.

director (for example, whether the approach is traditional, more informal, focused on celebration of life etc.) in addition to price and other transparency information which would be required by Remedy 1 and would need to be standardised sufficiently to allow a degree of comparison.

- 2.12 For headline purposes to show on a comparison platform, that could be in the form of an indicative range of prices for the available options, rather than an attempt to provide a full comparison of every possibility.
- 2.13 We agree with the CMA that more transparency over disbursement costs and early indications of what these costs might be is important to helping customers consider outlays. However, as the CMA has implicitly observed, the funeral director may not be in a position to provide certainty over a wide range of costs or important elements of the service including the length of time available for a service and the availability/choice of slots (with consumers generally less keen on services which are early or late in the day).

Offer of the same price across all sales channels and offer of national pricing (paragraph 32(e)) and paragraph 35)

- 2.14 [X]. However it is unclear what adverse effect on competition the CMA intends to address through such a remedy and why it is justified. The CMA's observation that '*it would eliminate price differentiation between online and in-branch sales*' is a tautology rather than an indication of the problem to be solved and there does not appear to be evidence presented in the published working papers to date that such differences present a concern. On its face, differences in price by channel may well be justifiable as a way to encourage appropriate use of channels that are lower cost. We note the CMA also propose an independent platform akin to a price comparison website in addition to information being made available from a funeral director's own direct channels. Are these alternatives or expected to work together. If so, how? In our view it would be right to leave scope for pricing in different channels, but describing those variations on a fully detailed comparison platform would create unreasonable complexity for customers.
- 2.15 Co-op is highly concerned about the suggestion that a requirement for national pricing by funeral operators such as Co-op is being explored by the CMA. Firstly, there appears to be no basis for an adverse effect on competition to which this would be a remedy. It is therefore on its face not only disproportionate, but unwarranted. It is a remedy highly likely to distort competition and ignores the competitive dynamics in funerals markets. It is uncontroversial that funerals markets are local. However (and this is different from many local retail markets), most competitors operate on a relatively local basis and therefore set prices by reference to both local costs and local competitive dynamics, rather pricing nationally by reference to average pricing. Disbursement costs vary across the UK and, prices are influenced by local factors such as the higher cost of labour in London.
- 2.16 A requirement for national pricing would therefore put the three national players in a position where they will be inherently too expensive and non-competitive compared to others in lower cost markets such as the north east, whilst potentially pricing at below market levels (and therefore below the level local independents can compete at) in higher cost local markets, such as those in London. In a situation where the three national players form less than a third of the total share nationally, competition cannot be said to be solely, or even primarily, driven by competition between national chains. A nationally set price would have a severe distorting effect on the funerals market and could have far reaching unintended effects for the three large operators (such as incentivising them to pull out of geographic areas that cost too much to serve or where national pricing makes them uncompetitive). As we have said, such a remedy would be unwarranted and would do little to address any concerns that have been identified by the

CMA. As these three large players form a relatively small proportion of the market, price competition in each local market is not driven by them (as may be the case, for example in grocery markets) so such distortions cannot be ignored.

- 2.17 For a large national business like Co-op, for administrative, brand, logistical and other reasons, all things being equal, a small number of price bands taking account of the cost to serve, local competition and socio demographic factors is optimal and we have rationalised and reduced the number of our price bands [redacted]⁷. As noted in response to question 14 of Annex B dated 31 July 2019, the take-up of the Co-op Simple funeral [redacted]⁸.
- 2.18 Ultimately, in the absence of any compelling evidence of a concern that requires such a remedy, such intrusive interference in the parties' judgement as to how best to compete where there are clear potential distortions to competition cannot be justified.

Creation of an independent platform (paragraphs 36 – 56)

- 2.19 We welcome consumers having easy access to information on funeral directors and crematoria in their area, as well as the services offered and associated pricing. We think this could be done in a relatively simple and light touch way which is easy for all FDs and consumers to engage with.
- 2.20 For example, it may be more proportionate and attainable for a platform to hold information on:
- (a) name, location, contact details, web address for all funeral directors (searchable by post code);
 - (b) indicative pricing information for e.g. a simple funeral and range of pricing for other options;
 - (c) a link to each funeral director's website which will contain full, transparent information on all their chosen pricing options, as required under Remedies 1 and 2, but which will also allow customers to get a qualitative sense of the funeral director's offer; and
 - (d) information collected or assessments made and published by the new quality regulator on back of house, and to the extent collected, front of house quality.
- 2.21 If the CMA believes that the harm caused to consumers requires a more interactive independent price comparison platform, then careful thought should be given to how this would operate to ensure it is easy to use for both the wide range of funeral directors and consumers and it does not result in information overload for families arranging a funeral. Poor design, or an overly complicated approach could drive poor decision making at worst, or lead it to irrelevance if it is too difficult to use.
- 2.22 We note that the CMA has expressed doubt as to which customers will willingly engage online (paragraph 41 of the Paper), however our view is that consumers are already engaging more via this route. We strongly believe that this will continue and we are planning accordingly.

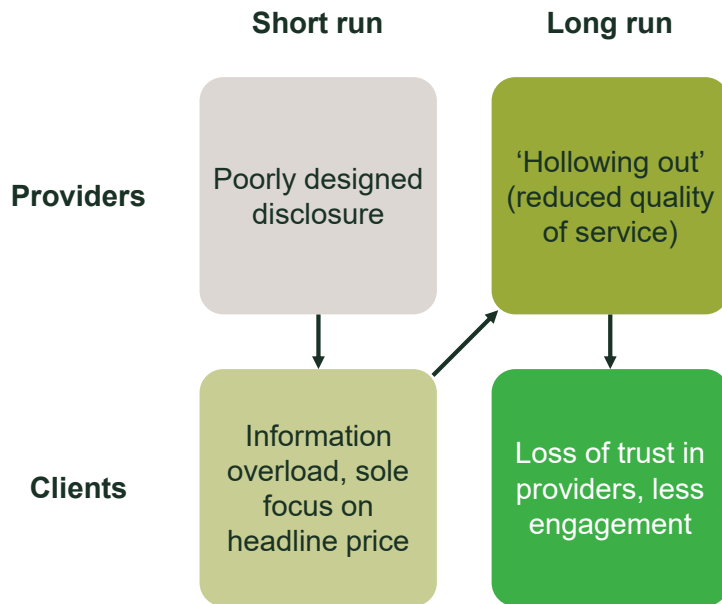
⁷ [redacted]

⁸ Please see Response to Take-up of Simple Working Paper, [redacted].

- 2.23 If there was easy access to information on funeral directors and crematoria in local areas as well as access to reliable and comprehensive information, backed up by a regulatory regime, were available online then this would be likely to increase the speed of online engagement.
- 2.24 The distressing nature of a funeral is likely to mean that, for many, a significant degree of face to face personal engagement is integral to the process but, for example, readily available and easy to use pricing information could well be reviewed by a customer prior to an arrangement meeting and lead to a better informed discussion of the options, including price, (even where the customer has no intention of shopping around).
- 2.25 As mentioned above, structuring a remedy in this area in a proportionate and useful form will require careful consideration to make this an effective, proportionate and enforceable remedy.
- 2.26 For a variety of reasons, including the need to discuss and understand arrangement options and customer welfare, the nature of funerals means that for most funerals it is unlikely that a customer would wish, or should complete the customer journey online without an arrangement meeting. We anticipate that the remedy will therefore look to give consumers access to a source of information prior to discussion with a funeral director, rather than a mechanism to decide on all the options available or a transactional platform containing the ability to buy a funeral online. These considerations should inform the design of any such platform and so the extent to which a high degree of granularity and complexity is useful.
- 2.27 We have set out above a suggestion for a relatively simple way in which consumers could gain access to significant information on choices, prices and services which would not result in information overload and would be easy to operate by funeral directors, with a mechanism to ensure that all information is accurate and up-to-date. If the CMA continued to believe a more detailed platform was appropriate then:
- (a) it must be a 'like for like' comparison which adequately captures the objective characteristics of the goods and services provided (e.g. it isn't enough to say a price includes a car, there needs to be an indication of what kind/age of car), or avoids claiming undue precision for example by offering information on the range offered;
 - (b) even for services with observable quality, there needs to be sufficient quality information to compare which might include some or all of the 'front of house' information that the CMA proposes should be collected in the Quality Regulation Remedies Working Paper;
 - (c) the roll-out of a platform must go hand in hand with measures to safeguard the quality of 'back of house' – as detailed in the CMA's Quality Remedies Working Paper;
 - (d) information on a platform must be in a form that consumers can understand and use; and
 - (e) the platform must be manageable for all funeral directors to use and understand how to provide accurate information. A facility where the majority of the information provided is not reliable or accurate would distort competition and ultimately harm consumers.
- 2.28 Our Submission 'Discussion of potential non-pricing remedies' on 7 November 2019 advocates the use of a price comparison website so long as they are designed to allow consumers to compare both price and quality, with quality of care being given prominence. Without emphasising quality of care, there is a risk that quality is 'hollowed out' as has been

demonstrated in insurance products.⁹ The risk of a race to the bottom on quality is particularly acute for at-need funerals since many important aspects of quality are unobservable to customers.¹⁰

Figure 1: Examples of unintended consequences



Source: Oxera.

2.29 We believe that an appropriate balance can be accomplished, but to get that balance wrong risks both distorting competition and degrading the service provided to customers. We believe an approach can be found which gives customers easy access to information that promotes transparency and provides the basis for informed customer conversations.

2.30 We have set out specific comments on certain aspects of the CMA's proposal below.

2.31 As discussed at [8-11] above, the level of disaggregation with which information is presented must be appropriate. For example, the CMA explains how the US Funeral Rule requires itemised price lists, but has not been effective in encouraging shopping around.

(a) 'We did not find any evidence to suggest that US consumers take advantage of the transparency provisions required by the Funeral Rule to actively shop around for the most cost-effective provider or to select different services (as part of their funeral package) from a variety of providers.'¹¹

2.32 This is unsurprising because, as explained by the 2018 Oxera report on Disclosure in at-need funerals, the itemisation of the price lists under the Funeral Rule is likely to lead to information

⁹ Fairer Finance (2018), 'Misbuying insurance', February.

¹⁰ Oxera (2018), 'Disclosure in at-need funerals', Fig 3.6.

¹¹ CMA (2019), 'International comparisons', Appendix B, para. 5.

overload of bereaved consumers.¹² This conclusion is confirmed by the academic literature, such as Kopp and Kemp (2007).¹³

- 2.33 We support proposed measures to ensure that the existence of where and how information can be accessed is fully promoted, so long as there is scope to do this sensitively and discreetly, taking into account the social and emotional needs customers.
- 2.34 As discussed at [15] above, careful consideration needs to be given to the level of detail that is included in any tool to facilitate comparison and the complexity that it offers customers. In practice, the more proportionate option may be to enable a hub, operated by the regulator to function as an authoritative central access point which gives enough indicative information for customers to have informed conversations with the funeral directors of their choice and a path through to more detailed information, including pricing information. This would provide a great deal more transparency than is currently available avoid information overload for customers by allowing them the option to go from high level to more detailed and be less costly and easier to implement.
- 2.35 The only reference to the inclusion of quality information in the tool is at paragraph 49 of the Paper, where the CMA suggests incorporation of a ratings system. By itself, this is insufficient. As we have indicated, the safety net of back of house regulatory measures and information on any objective differences in the different offers being made is essential. Inclusion of ratings can be useful an indicator of the subjective quality of the experience, but in practice reported satisfaction levels and net promoter scores in the industry are very high and this may be a limited differentiator. Soliciting feedback from bereaved families is difficult and funeral directors will be understandably reluctant to press their customers for feedback. Any comment based system will need to be sensitive to the context: families may well see and could be distressed by observations made on a public forum – for example, some level of restriction or moderation of verbatim comments would be desirable.
- 2.36 The cost of cremation or burial is a substantial part of the total price paid by a customer for a funeral and it would be right to include at least some crematoria information and options into the platform. The relatively small number of crematoria should make this tractable and we currently provide indicative local crematoria costs within our own pricing tool.
- 2.37 The CMA rightly observes that there is a potential loss of innovation, which may be significant, that results from standardisation of how funerals are presented and offered. A standardised check box approach, such as that envisaged by the CMA's pricing platform would likely not have encouraged the emergence of simple funerals, or direct cremation as communicating the benefits of those and encouraging uptake may not have been straightforward in the context of a platform based comparison. 'Softer' differences, such as differences in style and approach of funeral are also difficult to communicate in this kind of environment and would therefore make innovation of that form harder. Conversely, very substantial changes in ways to deliver a funeral which could emerge, such as mobile funeral homes, or new techniques such as alkaline hydrolysis/resomation that will not be easy to communicate in comparison with other options. For that reason, we favour a staged approach, where an independent hub is a means to present key, high level information, as well as links to the transparent, published information of individual funeral directors.

¹² Oxera (2018), 'Disclosure in at-need funerals', section 4.3.

¹³ Kopp, S.W. and Kemp, E. (2007), 'The death care industry: A review of regulatory and consumer issues', *Journal of Consumer Affairs*, 41:1, p. 165.

3 Proposed Remedy 2 – Intermediaries to (more effectively) inform customers of their customers of their options and encourage shopping around

3.1 We believe that simple promotion of a platform could be done by intermediaries, who should be encouraged to do so.

3.2 As the CMA correctly observes at paragraph 59 discussions with the bereaved about funeral planning by intermediaries do need to be carried out with sensitivity. The benefits of the current system is that engagement by customers with a funeral director tends to be customer led – in that the customer chooses when and how to engage with a funeral director and expects to have that discussion. Unsolicited engagement by a third party, done inappropriately risks distressing the bereaved and hindering rather than helping them consider their options or shopping around.

3.3 We therefore agree that well considered guidance to support engagement with families is not only beneficial but very important. That guidance should focus on ensuring information on choice is delivered, and also on how to deliver such information sensitively and appropriately.

3.4 The existing NHS 'end of life pathway' guidance could incorporate some information about organising a funeral, drawing on the funerals advice that the CMA has already published. The NHS could also leverage their bereavement offices to provide information, help and support to plan for death. These services are already well equipped to manage sensitive discussions on these matters.

4 Proposed Remedy 3 – Funeral planning awareness before the point of need

4.1 Measures to promote awareness of funeral planning before the point of need can only be beneficial to customers and in general, should result in better decision making, as there is more time and space to consider options and make informed decisions, without the pressure of bereavement.

4.2 In our view, well designed pre-paid plans, properly sold, are a part of the answer. In the Paper 'Funerals regulation in comparator countries' submitted on 17 April 2019, we set out international comparisons showing that pre-paid plans are a key feature of the funerals market particularly in France, the Netherlands, Spain and the USA.

5 Proposed Remedy 4 – Mandatory 'reflection period'

5.1 We agree with the core aim of this remedy, to create more time and pace for customers to consider options and make better decisions. In the absence of other factors, a pause before a customer commits to a financial arrangement to take a funeral would be beneficial.

5.2 However, in practice, there is little or no evidence to suggest an adverse effect in the form of customers who are unhappy with the funeral that they ultimately received or that find themselves prevented from exercising choice to move to an alternative provider. As further outlined below, there are significant potential costs and risks from such a remedy, if framed widely, that are disproportionate to, and unjustified by, the need to remedy a potential adverse effect of competition.

5.3 In the context of a funeral, there are other factors which often militate against an extended period of decision making. Customers have religious, cultural and sometimes emotional needs to conclude a funeral quickly, in a time frame that would not accommodate a significant reflection period and certainly not one of the order of 14 days. An extended period may delay funerals,

particularly in parts of the UK where funerals take place sooner than average. Cremation without Ceremony funerals take place as soon as the paperwork is ready and payment in full has been received. Please see the accompanying 'Time in Care' document shows the wide discrepancies across the UK.

- 5.4 Our funerals (excepting Cremation without Ceremony) are paid for in two parts: the disbursements (for third party products and services e.g. flowers, crematorium, minister etc.) are paid within 24 hours (in practice it is normally 48 hours) of arranging the funeral, with the balance payable after the funeral. We would be keen to understand the detailed proposals for a reflection period so we can consider how this would affect invoicing practices. There is a risk of funerals being delayed if funeral directors are unable or unwilling to invoice for disbursements prior to the end of any reflection period. Any increase in the period between the date of death and the funeral will have adverse consequences for consumers. Bereaved families are likely to be distressed by the delays and there may be an impact on funeral costs and ultimately pricing (to reflect the increased cost of caring for the deceased and the investment required to cope with increases in capacity whilst a reflection period is respected). Our Cremation without Ceremony funerals take place as soon as the paperwork is ready and payment in full has been received (i.e. no deposit is taken).
- 5.5 Based on Co-op data, a mandatory reflection period of 14 days after the arrangement meeting would cause almost 50% of funerals to be delayed.
- 5.6 Delays of this kind cause not only increased costs for longer storage, but increased costs for viewing, embalming (as longer waiting times may necessitate higher embalming rates), refrigeration, as more deceased are in our care at any given time and other costs associated with the management of a funeral as the bereaved family needs to be supported in the longer period up to the funeral.
- 5.7 In the context, we do not consider that an approach based on the CCRs is therefore useful. However, explicitly allowing a customer even a short period (e.g. 24 - 48 hours) to reflect, after an arrangement meeting before financially committing to a funeral arrangement could be beneficial, particularly when accompanied by a mandatory reminder that the customer has a window to change their mind and can consider other options, including alternative providers if they wish may be a good option. The appropriate length of reflection period may differ depending on the support available to a person arranging a funeral. In the majority of cases, the person arranging the funeral is accompanied by another adult (family member, friend, social worker, neighbour) or the arrangement decisions are made by two or more people. We would suggest that in those circumstances, a shorter reflection period of 24 hours may be appropriate, while an unaccompanied person may require up to 3 days to reflect.
- 5.8 We agree that any imposition of costs collection and storage should be limited to the reasonable cost incurred during the period the funeral director has cared for the deceased (as if tendered on standalone arm's length basis). We currently charge a flat fee and we believe this may be simpler to manage and easier for customers to understand. We would suggest that a fee in the region of £[X] would be reasonable where the deceased has been in the care of the first funeral director for a period of up to 3/5 days, save for circumstances where the funeral director has been remunerated for example in the case of a removal under a coroner's contract. Additional charges may be required in more unusual, more complex circumstances, for example where there is an extended period of disagreement amongst the family of the deceased.

6 Remedy 5 – Potential cap on the level of charges incurred for collection, transportation and storage of the deceased

- 6.1 We are supportive of the principle of this remedy.
- 6.2 We disagree with the CMA's observation at paragraph 94 of the Paper that the activities of collection, transportation and storage of the deceased are '*relatively homogeneous*'. Whilst in theory this sounds right, in practice there is substantial variation in how these services are delivered e.g. in the nature of the vehicles used, the number of staff attending, means of handling the deceased, and higher costs related to weekend/out of hours collections.
- 6.3 The starting point for a cap for such services needs to be based on the cost as delivered to the right level of 'back of house' standards to be set in future quality regulation and interaction with this remedy, as well as any price control remedy needs to be taken into account, rather than actual costs. It is therefore likely that a current sample of actual costs is not the right basis for a cap without taking into account some adjustment or check on the nature of service being delivered for those costs.

7 Remedy 6 – Managing conflicts of interest

- 7.1 Commercial arrangements with third parties can bring significant benefits to families at a difficult time and such arrangements are desirable and sought-after by third parties looking to improve the range of services that their customers can access: responding to needs and filling-in 'gaps' in what is a very emotional customer journey requiring high levels of support. Provided this is done in a transparent way, being clear that it is optional and services are available from others then this should not be an area of concern.
- 7.2 For example:
- (a) Early engagement of legal services can facilitate with funding the funeral from the estate of the deceased (rather than by the relatives/next of kin). Co-op's bereavement notification service is a free service that can assist the bereaved during a difficult time.
 - (b) Transparent relationships between funeral directors and intermediaries such as care home, hospices and hospitals are of benefit to consumers, enabling them to start discussions early around end of life planning. We know from our own discussions with hospices that they consider that there is a gap in the service they can provide to patients and their families which occurs at the point of death (as well as in planning for death) and that without the ability to effectively sign-post into trusted partners, that they are placing unnecessary strain on their customers who are asking for their help. While processes exist where employees are encouraged to discuss funeral plans and next steps with patients, employees do not feel that they can give advice and also sometimes it can be very difficult to engage patients and their families in these conversations due to their state of mind. We consider that there is a real benefit to consumers in starting the conversation early with them and their loved ones so that they feel supported and well informed as to the decisions to be made and options available to them.
- 7.3 Commercial relationships with legal service providers are reasonably common and legal service providers are already highly regulated by the Solicitors Regulation Authority, ensuring a good level of consumer protection. In our business, clients are always clearly informed that Co-operative Legal Services are part of the Co-op Group.
- 7.4 [X].

7.5 We believe it would be disproportionate to prohibit or restrict the ability for funeral directors to make commercial arrangements with third parties and put at risk certain benefits for customers. More proportionate and more appropriate parameters for relationships with third parties could include:

- (a) in order to protect consumers' best interests and prevent any conflict of interest arising; the existence of any direct or indirect payments made by funeral directors to third party intermediaries in order to secure referrals or recommendations should be clearly disclosed to the customer at the point of referral or recommendation (and at the first interaction with the relevant funeral director) and be prohibited where this will not be adhered to;
- (b) to ensure that consumer's choices aren't restricted, arrangements between intermediaries and funeral directors or other related service providers (such as legal services or celebrants) should be on a non-exclusive basis;
- (c) to ensure transparency and choice, the arrangement should be completely transparent and it should be clear that a fee may be payable for additional services. In addition, intermediaries staff and Funeral Directors staff should make it clear to patients and families that they are under no obligation to purchase from the funeral director to whom they have been introduced and are informed about their right to switch and any appropriate reflection period that may be implemented.
- (d) finally, the customer's express consent should be required at all times.

8 Remedy 7 – Disclosure of business ownership and other commercial relationships

8.1 We are supportive of the principle of this remedy.

8.2 In response to Paragraph 111 of the Paper, we do not consider that the CMA has provided any evidence to show that any other changes need to be disclosed to customers. The example cited in paragraph 111 (a change in staff) would be administratively costly and disproportionate: while our staff provide a very personal service to customers, ultimately Co-op is responsible for the provision of services and is seen to be so by our customers.

Schedule

Responses to CMA consultation questions

Invitation to comment – overall package of remedies

In paragraph 28 of the Paper, the CMA has invited comment on the following general questions:

- (a) What are the expected costs to funeral directors and/or crematoria of implementing the remedy and reporting compliance?

Co-op response: We believe the costs of provision of information directly by the funeral director are largely administrative and should not impose a material burden on funeral directors. There will be a cost associated with developing a platform or hub. These will go beyond the costs of developing the website itself, but depending on the complexity of the approach adopted, will extend to the costs of agreement of approach, governance, verification of data etc. which could be substantial on an ongoing basis. Cost should therefore factor into the choice of a proportionate tool.

- (b) How should compliance with the remedy be demonstrated and how should this be supervised by the relevant bodies?

Co-op response: To a large extent it is relatively easy to verify compliance with obligations to publish information. This will be apparent on the face of a funeral director's interactions with customers and can be spot checked easily by an interested party, a trade association, or ideally a regulator empowered to act on those checks. As stated in our post-hearing letter to the CMA dated 7 August 2019, a regulator could be given powers to request information from funeral directors (such as bank statements, terms and conditions for payment, staff commission, bonus policies and training materials) in order to ensure that compliance with price transparency and comparability remedies have been adhered to (see paragraph 6.8). Spot checks and mystery shopping exercises could also be carried out to ensure that remedies are being adhered to. A quality regulator that is already engaging with funeral directors to manage a licensing regime could, as part of the process facilitate and/or seek confirmation of compliance.

It is more difficult to test the accuracy of information provided. The governance arrangements for any independent platform will likely require some mechanism for validation of the data provided to the platform.

- (c) Should any remedies be time-limited? If so, why?

Co-op response: It is likely that it will be appropriate to periodically review the effectiveness of all remedies put into place and to time limit a number of the remedies. Markets evolve over time and remedies become irrelevant due to changes in market practice, or redundant because they have been successful. An unnecessary remedy that remains in place may well add costs of compliance and may well create market distortions.

The CMA should also consider the imposition of remedies in a staged way to allow for a review of their success and to assess the necessity for further remedies.

- (d) Should we consider a firm size threshold for any of the remedies discussed here? And if so, what should that threshold be, and why?

Co-op response: The CMA has not presented evidence that any adverse effects on competition are attributable to the relative size of a funeral business (large or small). It would therefore seem unjustified to impose a threshold which would have the effect of unfairly distorting competition by increasing the running costs of those businesses to which the threshold applies.

Applying a threshold would be likely to undermine the trust of consumers who will reasonably expect universal standards across the funeral sector. Regard must be had to the nature of the competitive landscape in which more than two-thirds of funerals are carried out by independent funeral directors. Regulations which apply only to the biggest players would create a 'two-tier' market which would severely undermine the effectiveness of the remedies and which could lead to an increase in customer confusion.

Where remedies increase the regulatory burden on businesses (such as CPD/training requirements), it may be appropriate to provide smaller businesses with a longer implementation period; however this should be proportionate and should not undermine the principle of universal adherence to a fair regulatory regime. However the requirements of any remedy must ultimately be workable for all.

- (e) Are there any relevant customer benefits in either market that may be lost or reduced by the implementation of these measures and that we should consider as part of our assessment of any remedy package?

Co-op response: See comments above. See also our response to the CMA's Working paper on Quality Remedies.

- (f) Are there any other remedies that may equally or more effectively improve the availability and transparency of information to consumers?

Co-op response: We have previously submitted proposals and these are summarised at our response to paragraph 57 below.

Invitation to comment on Remedy 1 – Price Transparency and Comparability

In paragraph 57 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

- (a) How can we best facilitate shopping around and increase customer awareness of total funeral costs and local price differentials?

Co-op response: Co-op has set out its views on potential remedies in our response to the CMA's market investigation Issues Statement, and 'Discussion of potential non-pricing remedies' dated 7 November 2019.

As we have indicated, our view is that an over-complex approach to transparency requirements risks both failure and distortion of the market. We have advocated a simpler approach in this response, building on our original proposals and the CMA's thinking.

In some respects, the CMA's suggestions in remedies 2, 3, 4 and 5 are potentially useful approaches to engaging customers and facilitating switching but which need further consideration as part of a wider, balanced, package of potential remedies which continues to meet customer needs at a difficult time.

(b) How can we enable better comparison of funeral directors' prices and quality of services?

Co-op response: There are a number of ways to enable customer comparisons of funeral directors' prices and quality of service. In addition to the variations on a hub or platform discussed above, funeral directors could be required or encouraged to list on at least one price comparison website (PCW), which would encourage customers to shop around and ensure price pressure and transparency for all funeral directors. This approach, as opposed to a single independent platform may leave scope for innovation in how funerals are presented and compared, which could evolve to serve customer needs.

(c) How can we better prepare the customer for the arrangement meeting and make them aware of all the options offered by the funeral director, including low-cost options?

Co-op response: Requiring funeral directors to publish their prices online would enable consumers to find the prices of any funeral director before entering the funeral home.

We are not convinced that the CMA's proposal in paragraph 32(b) (to provide prices at the first point of contact) is proportionate or effective and believe it may lead to adverse outcomes. In our experience, many recently bereaved families are not ready to consider prices at the point of first contact.¹⁴ As discussed elsewhere in this response, a more effective set of remedies may be a cap on the costs of switching funeral directors accompanied with publicity of the right to switch.

(d) How can we give customers a clearer idea of the final cost (early on in the process of choosing a funeral director and before the arrangement meeting)?

Co-op response: As set out in our paper 'Discussion of potential non-pricing remedies' dated 7 November 2019 we believe it would be helpful for funeral directors to be required offer a standardised Simple funeral at the start of the point of sale conversation and on their websites; and to present the Simple

¹⁴ Please see 'The client experience' section in our response to the CMA's request for information dated 4 June 2018, particularly paragraph 4 (setting out the practical steps which require to be undertaken following death) and paragraph 7 (setting out some of the decisions which require to be made)

funeral with no-less-than-equal prominence to any other options. Also see answer to (c) above.

- (e) How can we make the platform most useful for customers how can we ensure that it is used by as many customers as possible?

Co-op response: The regime should oblige funeral directors to direct customers to information that is made available online in sales literature. As we have indicated, a more proportionate hub, hosted by a regulator is likely to be more effective and easier to implement than a full comparison platform, as proposed by the CMA.

- (f) Should funeral directors and crematoria operators be required to adopt a standardised methodology for presenting pricing and service data as an alternative to the platform?

Co-op response:

- (g) Should crematoria availability be incorporated into the platform?

Co-op response: Yes, we think that information provided by funeral directors should include basic information on the he material elements of a funeral of which cremation is a significant 'disbursement'. For example, our own tool currently provides indicative information for crematoria prices in each location, but does not provide full details of all service options offered by each.

- (h) What will be the likely costs of this remedy?

Co-op response: We have limited relevant experience to allow us to estimate the cost although the cost would greatly depend on the level of functionality. We consider that a relatively simple hub such as we have advocated, would be reasonably inexpensive to set up and administer.

- (i) Will this remedy give rise to any potential unintended consequences?

Co-op response: See above

Invitation to comment on Remedy 2 – Intermediaries to (more effectively) inform customers of their options and encourage shopping around

In paragraph 66 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

- (a) Are there intermediaries other than the CQC who provide, or are well placed to provide, information on funeral planning to those close to death or to the bereaved?

Co-op response: We consider that the existing NHS 'end of life pathway' guidance could incorporate some information about organising a funeral, drawing on the funerals advice that the CMA has already published. The NHS could also leverage their bereavement offices to provide information, help and support to plan for death.

- (b) Are other ways in which funeral directors and crematoria operators can raise awareness of the platform other than providing information on their websites and promotional material and discussing the platform at the arrangement meeting?

Co-op response: **Open days are a good way of raising awareness of funerals generally and could be used to promote awareness of any hub or platform**

- (c) Are there alternatives to raising awareness of the platform to general advertising and the use of intermediaries?

Co-op response: **Consumer groups such as the Citizens Advice Bureau, Moneysupermarket, Money Advice, Which? etc. could play a role.**

- (d) What are the likely costs of this remedy?

Co-op response: **Such awareness raising is likely to be an adjunct to the existing activity of intermediaries and so likely to be proportionate, but we do not have a view on the potential costs.**

- (e) Will this remedy give rise to any potential unintended consequences?

Co-op response: **We are not aware of any and are in favour of any measures that will help to break down the taboos around death and prompt earlier planning and consideration of funerals.**

Invitation to comment on Remedy 3 – Funeral planning awareness before the point of need

In paragraph 77 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

- (a) Are there particular circumstances prior to the point of need at which consumers are likely to be receptive to the idea of preparing for their funeral or that of a loved one?

Co-op response: **There are obvious times in life when it may be useful to consider funeral planning (for example retirement, entering a care home, or on diagnosis of a serious illness); however, a great deal of tact and care must be exercised. While it may be practical and sensible to consider funeral planning when one enters a care home, it can be a very emotional and distressing time: it could be considered wholly inappropriate to promote funeral planning at such a sensitive time. In some cases, the point at which a consumer plans their will could also be an appropriate time to consider funeral planning, as this is often a customer-led engagement, choosing to plan for the future at that point. It is not unusual for wills to contain expressions of wishes as to funeral preferences. However, this will not be appropriate in every case.**

- (b) What interventions (if any) are likely to encourage funeral planning and how might they be delivered?

Co-op response: **There is no single appropriate approach to this and as discussed, intervention to encourage funeral planning needs to be sensitive to the emotional wellbeing and needs of the individual.**

(c) Should this remedy target particular types of consumers?

Co-op response: See above. We do not think it appropriate to try and target particular types of customers.

(d) What are the likely costs of the remedy?

Co-op response: We are unable to answer this question at this stage, but would not expect costs of this remedy to be disproportionate.

(e) Will this remedy give rise to any potential unintended consequences?

Co-op response: We are not aware of any, other than the potential for causing distress and/or offence if approaches are made insensitively. Overall, we are in favour of any measures that will help to break down the taboos around death and prompt earlier planning and consideration of funerals.

Invitation to comment on Remedy 4 – Mandatory 'reflection period'

In paragraph 90 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

(a) Is a 'reflection period' an effective mechanism for encouraging customers to ensure that they choose a funeral director that best meets their needs?

Co-op response: We are concerned about the effectiveness of a mandatory 'reflection period' and how it may work in practice but believe that there could be benefits to a short reflection period (see above and answers to (b) below). We consider that a cap on the level of charges incurred for the collection, transportation and storage of the deceased together with the advertisement of a customer's right to transfer may be a more effective remedy. As stated in paragraph 5.2 above, there is weak evidence that consumers are locked in to a funeral director who has collected the deceased: 78% of consumers choose funeral directors for positive reasons and of those who do not, a material proportion do switch after collection of the deceased.

(b) If so, when should this 'reflection period take place?

(i) After getting information on funeral options from a funeral director on its premises and before signing the contract?

(ii) after signing the contract in an arrangement meeting but having cancellation rights for a certain period of time afterwards? or

(iii) another suitable time?

Co-op response: See comments above. Any such period would need to be materially shorter than 14 days and could not be entirely mandatory in all circumstances (regardless of when such a period might commence).

(c) What are the likely costs of this remedy?

Co-op response: A 14 day reflection period is likely to result in disproportionately high costs as we believe it is likely to increase the time in care for the deceased materially.

(d) Will this remedy give rise to any potential unintended consequences?

Co-op response: This proposed remedy may have the effect of increasing the period between death and the funeral. This would be unacceptable, particularly for communities which prioritise speed of the funeral. As discussed above, we consider a cap on the level of charges incurred for the collection, transportation and storage of the deceased together with the advertisement of a customer's right to transfer to be a more effective remedy. As stated in paragraph 5.2 above, there is weak evidence that consumers are locked in to a funeral director who has collected the deceased: 78% of consumers choose funeral directors for positive reasons.

Invitation to comment on Remedy 5 – Potential cap on the level of charges incurred for the collection, transportation and storage of the deceased

In paragraph 97 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

(a) Will the imposition of a cap on the collection, transportation and storage of the deceased encourage more customers to switch funeral directors after having reflected on their original choice of funeral director?

Co-op response: We believe that a cap may encourage more customers to switch funeral directors after having reflected on their original choice of funeral director as stated in paragraph 5.2 above, there is weak evidence that consumers are locked in to a funeral director who has collected the deceased. For this proposed remedy to be effective, it should be accompanied by mandatory advertisement of the cap and customers' rights to transfer. We consider that such a remedy would be more effective than a mandatory 'reflection period'.

(b) How should the cap be calculated?

(i) Should the charge for collection and transport reflect the distance covered by the funeral director or represent an average cost?

Co-op response: The cap should be calculated by reference to the reasonable costs of transportation, handling and storage. We currently charge a flat fee and we believe this may be simpler to manage and easier for customers to understand. We would suggest that a fee in the region of £250 would be reasonable where the deceased has been in the care of the first funeral director for a period of up to 3 - 5 days, save for circumstances where the funeral director has been remunerated for example in the case of a removal under a coroner's contract. Additional charges may be required in more unusual, more complex circumstances, for example where there is an extended period of disagreement amongst the family of the deceased.

- (ii) Should there a daily charge for the storage of the deceased or an average charge for storage, which reflects the average length of time that the deceased is typically stored?

Co-op response: **Any charge should reflect the cost of providing the service. A uniform charge calculated on the average cost would be simpler for customers to understand.**

- (c) Are there other approaches to setting a potential cap on charges levied by funeral directors for the collection, transportation and storage of the deceased (other than cost-based approaches) that the CMA should consider?

Co-op response: **We are not aware of any.**

- (d) What are the likely costs of this remedy?

Co-op response: **For our business, we do not believe that a cap set an appropriate level will lead to additional cost.**

- (e) Could this remedy give rise to any unintended consequences?

Co-op response: **This remedy may lead to longer periods between death and collection if funeral directors are reluctant to collect the deceased prior to a conversation with the family of the deceased (who may not be ready to have such a conversation in the immediate hours following death).**

Invitation to comment on Remedy 6 – Managing conflicts of interest

In paragraph 104 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

- (a) Are there any other ways to eliminate conflicts of interest that may adversely impact the quality of service provided by funeral director to customers?

Co-op response: **None that are apparent at this time. As we have indicated, a proportionate approach, largely based on transparency is appropriate.**

- (b) Are there any other types of inducements or payments that should be captured by this remedy?

Co-op response: **N/A**

- (c) What are the likely costs of this remedy?

Co-op response: **The primary impact of the remedy, if all incentives are prohibited is the loss of customer benefits:**

(A) **The customer would also lose out on the expert care and support that the agreement was set up to provide at their time of need.**

(B) **Partnerships also help to introduce conversations around funeral planning much earlier, maybe weeks or months before time of death, allowing the clients more time to review options in the market. Currently most conversations are only at point of need and we have been told that staff and volunteers at hospices struggle to have these conversations due to a lack of expert**

knowledge or confidence. This remedy would likely mean customers in these environments will miss out on this information, support and continuity of care that are provided by these types of partnerships. This could mean they are left under undue stress and pressure as they won't have access to the support they want.

(d) Will this remedy give rise to any potential unintended consequences?

Co-op response: Restrictions on commercial partnerships may materially reduce innovation by discouraging/ preventing organisations from co-operating to support consumers and address the taboo of death in the UK. There is also a risk that restrictions will actually decrease transparency by encouraging informal arrangements (indirect payments, donations and other inducements). We strongly believe that clear and transparent arrangements, coupled with consumer choices will be better for consumers, funeral directors and third parties.

Invitation to comment on Remedy 7 – Disclosure of business ownership and other commercial relationships

In paragraph 112 of the Information and Transparency Remedies paper, the CMA has invited comment on the following:

(a) What potential harm could the non-disclosure of business interests and other commercial relationship cause customers?

Co-op response: Transparency and clarity are generally preferable; without it, customers are less able to make informed decisions.

(b) What business relationships and other commercial relationships should be disclosed to customers?

Co-op response: All ownership and vertical integration information between funeral homes and a parent or between funeral homes and a crematoria should be disclosed to ensure customers know which organisation they are dealing with and is accountable to them when they transact. We do not consider that the CMA has provided any evidence to show that any other business changes or commercial relationships need to be disclosed to customers. The example cited in paragraph 111 (a change in staff) would be administratively costly and disproportionate: while our staff provide a very personal service to customers, ultimately Co-op is responsible for the provision of services and is seen to be so by our customers.

(c) How should such interests and relationship be disclosed to customers?

Co-op response: The ultimate ownership and key business interests should be apparent to a customer as soon as they engage with a funeral director. It should be apparent immediately on looking at the customer facing branding of a funeral home, on the home page of its website and in the branding displayed on its promotional materials.

(d) What are the likely costs of this remedy?

Co-op response: **We do not believe that this remedy would result in additional material costs.**

(e) Will this remedy give rise to any potential unintended consequences?

Co-op response: **We are not aware of any and generally support the principle of transparency as beneficial to customers.**