

REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

CO-OP RESPONSE

1. EXECUTIVE SUMMARY

- 1.1 While the CMA has withdrawn its deadline for submission of comments on its latest batch of working papers, it has asked Co-op if it is in a position to provide comments. We have previously shared that we are willing to do this, however, the comments are being finalised by the Legal team without significant involvement by our Funeralcare business colleagues, who are currently focussed on adapting to the significantly changing environment resulting from the coronavirus pandemic and ensuring we continue to support families at this very difficult time. We, therefore, may have additional comments we want to add at a later date.
- 1.2 This document sets out Co-op's submissions (on the basis set out above) in response to the CMA's Working Paper on Remedy options for regulating the price of funeral director services at the point of need. This response was largely drafted prior to the COVID-19 pandemic and does not therefore fully take account of its implications for our customers, our business and the sector as a whole.
- 1.3 However, our early experience shows that in the short term, the impact of the outbreak includes:
- 1.3.1 operational disruption;
 - 1.3.2 a change in the way customers interact with the business (we are seeing a significant shift from face-to-face contact) to use of telephone and online;
 - 1.3.3 significant increased costs, in particular as a result of needing to both pay colleagues who are self-isolating or sick as well as colleagues to perform the tasks those out of the business would have performed, but also other costs such as to add mortuary capacity in key urban areas and to supply sufficient PPE equipment to protect our staff;
 - 1.3.4 a shift in the mix of funerals towards slimmed-down propositions or options without ceremony due to the need to comply with the Government's social distancing guidance. This is significantly impacting on the financial performance of the business and we are needing to adapt our offering so we can support families to say goodbye to their loved ones in the best way they can. We have shared with you the proposition changes we made on 3 April and we continue to monitor the situation and will adapt as appropriate;
 - 1.3.5 deaths being brought forward (resulting in a decreasing number of funerals after the outbreak);
 - 1.3.6 the significant emotional and psychological impacts on funeral directors who are giving dignity to the deceased, supporting the family of the deceased whilst having to explain the restrictions imposed by the emergency rules. Furthermore, all our colleagues are dealing with the worry of the personal risk they are taking by being away from their homes and the consequent increase in risk which their families will be exposed to; and

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- 1.3.7 without increased government support¹ losses being incurred by funeral providers as the mix changes. This is likely to impact on the financial viability of funeral providers if the situation continues for some months.
- 1.4 While some of these impacts may be temporary, we believe that others will speed up or lead to permanent changes we were already seeing in the market as funeral directors exit the market and consumers become more familiar with unattended funerals.
- 1.5 For example, we believe the increased take-up of unattended funerals will become a permanent feature of the market, putting sustained pressure on the profitability of funeral directors.
- 1.6 We have been very clear in our earlier submissions that we believe the funerals market was and is changing and we believe the CMA should recognise this change which will only increase with the impact of the COVID-19 outbreak. We believe that the CMA's proposed remedies on pricing are not appropriate or proportionate and believe the CMA should reconsider its proposals in this area. If these were imposed after a sustained and difficult period for the industry in stepping up to respond to the COVID 19 pandemic then it would be likely to have a very significant adverse impact on what will be an already fragile industry with serious consumer detriment.
- 1.7 We will keep the CMA updated on our experiences and the impact on our business. As you would anticipate we are revisiting our group forecasts in the light of the coronavirus pandemic and assuming the pandemic continues in the UK for 6 months, whilst these are necessarily being reviewed regularly and are therefore indicative, we are currently estimating that this would have a negative profit impact on our Funeralcare business ranging from [X].
- 1.8 The CMA's proposed price control remedy would be wholly disproportionate and ineffective.
- 1.8.1 This proposal for a price control is wide-reaching and intrusive, unclear in its details, and fundamentally lacking in evidence.
- 1.8.2 Given the broad scope of the 'benchmark' funeral package, and the lack of clarity over how the level of the price control would be set, it is incorrect to call it a 'safeguard cap'.
- 1.8.3 The resulting unintended consequences would undermine any broader package of remedies; there is no evidence that the relationship between the price control and other proposed remedies has been considered by the CMA.
- 1.9 Co-op's experience is that the funerals market is developing rapidly with consumer needs changing and an increasing expectation of personalisation of funerals. There is no one-size-fits-all solution for a funeral. Different people have very different expectations. The CMA's research finds that the FD's ability to meet bespoke requirements is one of the most important aspects in a customer's choice of FD also underlines this.² Funerals and associated celebrations of life are the opportunity for people to say their last goodbye to loved ones. We feel strongly that we should meet families' expectations and facilitate the ability for them to say goodbye in the way they wish to do so, being clear and transparent on the options

¹ Current Government packages available do not materially help the sector. [X].

² CMA (2020), 'Consumer survey results', tables 5, 6, 20

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

available and the associated price. We do not believe it is for the CMA, or others, to dictate to consumers or curtail their choices. Funerals are not a commodity service.

- 1.10 Price will be a factor in the decision making, but not the only one. This is not surprising, bearing in mind the nature of the service being provided. Nevertheless, the 'benchmark' package is an expansive list of products and services without reference to standards or quality, or to religious or cultural differences. The CMA has proposed to the price for the set a 'benchmark' package in reference to price of products and services comparable to the 'benchmark' package. However, this expansive benchmark package does not set out the required level of customer care, the level of care for the deceased, the standard of the vehicle, the standard of customer-facing facilities, nor does the CMA specify the type of hearse, coffin or limousine. Setting a price cap based on average prices of these products and services will result in the hollowing out of quality of many FD's in order to reduce costs. This concern is even more pronounced where the CMA sets the benchmark price equal to the lowest 25 percentile, meaning many funeral directors would have to price below cost.

The evidence base does not support the need for price controls

- 1.11 The evidence base cited by the CMA in other working papers is backward-looking and does not support the need for price controls. As explained in detail in our responses to the other working papers, much of the evidence points towards a well-functioning and competitive market with high levels of consumer satisfaction. Prices of at-need funerals are already at 'competitive levels'. There is no need to 'reset' prices. The various working papers published by the CMA show that in recent years, market competition has significantly intensified. The CMA's papers point to changes in funeral directors' pricing levels and trends resulting in downward pressure on real prices. The CMA's 'Firm-level analysis', shows that customers are switching between low-cost and standard funerals.³ Our response to the CMA's company-level analysis shows that there is evidence that new entry and competition by independents were very important factors in explaining larger providers' long-term at-need volume and market share declines. It shows that non-price elements (e.g. type of funeral director, quality of service) are essential to explain consumer behaviour and preferences. These changes in market structure and intensified competition have resulted in market wide price changes and price pressure in the last three years.⁴ These market characteristics as well as the more recent changes do not provide support for a price control intervention.

The relationship between different remedies is incoherent and inconsistent

- 1.12 The relationship between the proposed price control and the other remedies in the CMA's proposed package is incoherent and inconsistent. First, there is a logical inconsistency in the CMA's apparent view that a price control is required while other remedies would be sufficient to 'stimulate competition and choice at prices below the level of the benchmark price cap'.⁵ We recognise that the CMA may describe the price control as a 'safeguard' option, in case the other remedies are not effective. However, it would only be a 'safeguard' option if the level of the price cap was set at a high level.

³ CMA (2020), 'Company-level price and market share analysis', 31 January, para 51.

⁴ Co-op response to the CMA's 'Company-level price and market share analysis'.

⁵ CMA (2020), 'Remedy options for regulating the price of funeral; directors service at the point of need', para. 51.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- 1.13 Second, the principle of rigidly defining the funeral package which would become the 'default' package for most of the market would undermine any attempt to introduce more consumer choice over the specific elements that consumers actually wanted in their funeral package. This is particularly problematic given the diversity in funeral requirements and the increasing desire for a bespoke funeral that allows loved ones to say their last goodbye to their loved one in a way which reflects their values.
- 1.14 The CMA has not demonstrated that a package of remedies *excluding* price regulation would be ineffective. The CMA is also proposing a range of quality regulation, a whole suite of information and transparency regulation as well as the regulation of crematoria. Co-op believes in the introduction of effective remedies to ensure consumers can make the right choices for them. We believe that a package of appropriate quality and information and transparency remedies (i.e. a package excluding price regulation and indeed local authority tendering) would be effective in solving the CMA's concerns regarding at-need funerals. It is unsurprising that, despite detailed international research by Oxera and by the CMA itself, there is no evidence that price controls for at-need funerals have ever been introduced in another country. We have provided our views on the use of tendering by local authorities as part of a remedies package in our response to the CMA's working paper 'Local Authority tendering remedy proposal'.
- 1.15 Regulatory best practice is to introduce intrusive remedies only when less intrusive remedies have been shown to be ineffective. The CMA should give the package of non-price remedies time to impact the market before turning to a remedy which, in our view, would have harmful side effects. We do not believe a pricing remedy is appropriate, however, if the CMA did not agree with our analysis, then a less intrusive remedy package proposed by the CMA could be to include the power for the regulator to introduce a price control if the rest of the package on its own proves ineffective. Even if the evidence supported the introduction of a price control as a last resort in the absence of other, less-intrusive remedies (which it does not) it would be best introduced by a sector-specific regulator. This regulator would then have the responsibility to enforce the regulation, monitor compliance, and carry out ex post evaluation of its effectiveness.

Unintended consequences are likely

- 1.16 Price control of at-need funerals would likely result in a number of harmful unintended consequences. The CMA: (i) underestimates how likely these risks are, (ii) underestimates the scale of the disruption and distress to consumers that would be caused if the risks materialise, (iii) does not consider all the likely unintended consequences, and (iv) proposes a limited set of mitigation strategies which are either wholly inadequate or would likely cause more problems than they would solve.
- 1.17 Specifically, the CMA's proposed price control would lead to reduced innovation, less consumer choice, and a distortion of the pre-need market. It is surprising that the CMA did not consider these unintended consequences given the CMA's recent 2020 report 'Regulation and Competition: A Review of the Evidence', which found that 'There is a general sense that regulation can struggle to cope with changing markets and innovation'. The CMA concluded that 'Policymakers and regulators should carry out strategic, forward-looking reviews of regulation. These should seek to evaluate the external factors that could have an important impact on how markets evolve in the future; to identify potential sources of disruption whether

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

from inside or outside of those markets; and, assess how regulation might need to change and adapt to accommodate such changes.⁶

- 1.18 The COVID-19 pandemic greatly increase the likelihood of unintended consequences. In response to the pandemic, funeral directors are implementing huge changes to their business (see paras. 1.1-1.7). It is highly unlikely that the sector will return to the historic position after a crisis period likely to last months, as the shape of the sector and customer habits change permanently. Any price control remedy based on a historic, backward looking pre-pandemic analysis will be wrong.

The design and scope of the price control is disproportionate

- 1.19 The CMA does not specify how the level of the price control would actually be set. Specifically, the CMA states that the price level would be set with reference to current at-need prices of comparable products and services in the UK, such as the 25th percentile, the median price, or 60th percentile. This leaves open the possibility that the CMA would introduce a price control reducing prices for 75% of funerals, which would likely result in prices below costs and the market exit of many funeral directors. This concern is even more pronounced, given that the CMA indicates that the level could be set by reference to the prices of products and services that are comparable to the 'benchmark' package, but does not make mention of the associated quality. Underlying quality and associated costs vary significantly across the range of FDs. As a result, it may indeed be those FDs with high quality services that will exit the market due to a price control that is below their cost levels. In any case, in our experience of providing funerals for countless customers across the country, there is no 'one-size-fits-all' when it comes to a funeral – each funeral is specific to each person. Funerals are not a commodity service. Setting a price control using 'comparable products' would mean that many customers would be provided with a service that they do not want.
- 1.20 In any case, even if the evidence supported the introduction of a price control (which it does not), the proposed form of price control would be excessive in scope in order to achieve the CMA's stated aims.
- 1.21 Finally, COVID-19 and the permanent changes that are likely to follow mean that the CMA's current evidence base will be wrong as a reference point for setting the level of a price control.

Excluding small funeral directors from any remedy would distort competition

- 1.22 Further, if the CMA were to introduce price regulation then it should include all providers, with no exceptions for small funeral directors (given small funeral directors constitute 70% of the market).⁷ Any attempt to exclude small funeral directors would distort competition between players who are or are not covered by the regulation, and would undermine the effectiveness of the remedy. Furthermore, the CMA have not provided any argument for why they should exclude small funeral directors. On the contrary, many small funeral directors are, according to the evidence which CMA is relying on, making excessive profits and have the potential to earn greater returns than larger funeral directors and that some of them are doing so.⁸

⁶ CMA (2020), 'Regulation and Competition: A Review of the Evidence', January, paras. 1.32, 6.3.

⁷ CMA (2019), 'Funerals market study – Final report and decision on a market investigation reference', para. 2.31.

⁸ CMA (2020), 'Funeral Directors: Profitability Analysis', para. 214.

The CMA must engage with all the evidence

1.23 Last, the working paper makes no mention of the November 2019 Oxera paper ‘Price regulation of UK at-need funerals’ (now published on the CMA website)⁹, which provides strong evidence for why price regulation of at-need funerals would be unsuitable and disproportionate. The CMA must engage with all the evidence, regardless of whether it is supportive of the CMA’s position.

2. THE EVIDENCE DOES NOT SUPPORT THE INTRODUCTION OF PRICE REGULATION

2.1 The evidence base cited by the CMA in other working papers does not support the introduction of price controls. In fact, the evidence points towards a well-functioning and competitive market with high levels of consumer satisfaction. The evidence does not support the need for a price control (or indeed any package of intrusive remedies), as explained in detail in our responses to other working papers.

2.2 Prices of at-need funerals are already at ‘competitive levels’. There is no need to ‘reset’ prices. In fact, given the competitive nature of pricing in the market, any attempt to ‘reset’ prices would cause lasting consumer harm by creating a default package and discouraging bespoke offerings – which is what people want.

2.2.1 The CMA working paper on ‘Company-level price and market share analysis’, that was intended to point to a lack of significant competitive constraint in the funerals market, suffers from serious limitations and does not provide an accurate description of the nature of the competition in the funerals market. We have provided evidence to the CMA that shows in this market: (i) competition takes place at a local level and is very heterogeneous with multiple providers competing with Co-op, Dignity and Funeral Partners; (ii) the competition is best characterised by long-term effects (as opposed to short term effects that can be identified in a before and after analysis in a short window of time); (iii) new entry and competition by independents were very important factors in explaining larger providers’ long-term at-need volume and market share declines; (iv) competition has had a significant impact on funeral director prices market-wide; and (v) non-price elements (e.g. type of funeral director, quality of service) are essential to explain consumer behaviour and preferences and are the main driver of the wide range of funeral options and the bespoke offerings. In addition, the CMA acknowledges that there is some evidence of consumers switching between low-cost and standard funerals.

2.2.2 As discussed in our response to the CMA’s working paper on the ‘Take-up of simple funerals’, we consider that the existence of evidence of substitution between Simple and other funeral packages within Co-op branches shows how consumers react when funeral packages are presented clearly alongside each other, and price information is transparent. As in other markets, consumers that purchase a funeral make their decisions based on a range of factors, such as the level of care, the option to personalise, ethnic or religious requirements, but also prices. In addition, it is important to note that Co-op’s reduction in market share (and particularly the significant reduction in volumes of traditional funerals) over the last 5 years

⁹[https://assets.publishing.service.gov.uk/media/5e4e4e41d3bf7f393e61826a/Oxera - Price regulation of UK funerals market - web ---.pdf](https://assets.publishing.service.gov.uk/media/5e4e4e41d3bf7f393e61826a/Oxera_-_Price_regulation_of_UK_funerals_market_-_web_---.pdf)

demonstrates that consumers are choosing other providers of at-need funerals more often than in the past, which in itself is clear evidence of switching across funeral directors. In response, we are currently reviewing our pricing and proposition strategy, with the aim of offering a set of proposition that meet consumer needs at competitive prices.

- 2.2.3 The CMA working paper 'Funeral directors price dispersion analysis' suffers from multiple shortcomings in terms of the data relied on and the failure to control for factors that explain price differences between funeral director providers, and as such cannot be used to characterise the degree of price dispersion that is due to lack of competition.
- 2.2.4 The CMA working paper on Funeral directors pricing levels and trends points to changes in the market dynamics (more price sensitivity, transparency, low-cost options, entry) that have resulted in price pressure in the last three years. In particular, considerable parts of the market have experienced a decrease in real average revenue per funeral since 2017. In addition, the CMA analysis points to a problem in the burial and cremation disbursements market where prices have increased at a higher rate than the professional fees.
- 2.2.5 Although the CMA finds that many providers in the market earn excess profits and that there is no downward pressure on the profitability, we consider that the CMA's conclusions would be different if it refined the analysis in line with our response to the profitability analysis and the cost of capital working papers. In particular, we consider that the cost of capital is underestimated and that the return on capital employed for large providers is overestimated. Moreover, the CMA would observe downward pressure on the profitability in the market, particularly, over the last two years, i.e. 2018 and 2019. Dignity's preliminary annual results of 2019 have been published and show that its unadjusted EBIT margin for funeral services has further decreased in 2019¹⁰ ¹¹ Co-op's profitability of at-need funerals continues to decline sharply in 2019 [X]. ¹²The financial position of funeral directors after responding to the coronavirus pandemic is likely to be very significantly altered making the CMA profitability analysis appear irrelevant to the likely position at that time.
- 2.2.6 The CMA's consumer survey findings show that nine in ten consumers considered that their expectations of the services provided by the funeral director had been met in full or had exceeded their expectations. Eight out of ten consumers stated they had recommended or would recommend the funeral director they used to someone else. This shows that consumers are satisfied with the service, both in terms of quality and prices. The results also show that the prices are sufficiently transparent. Further, consumers are aware of the possibility of switching, and there are no barriers to switching.
- 2.2.7 The CMA international comparisons study comes to the same conclusion as the Oxera paper on international comparisons: there are no instances of price regulation

¹⁰ https://www.dignityplc.co.uk/media/3899/dignity_plc_2019_preliminary-announcement.pdf

¹¹ Co-op response to CMA working paper 'Funeral directors profitability analysis', figure 3.

¹² Co-op response to CMA working paper 'Funeral directors profitability analysis', figure 4.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

of funerals.¹³ The only exception found by either Oxera or the CMA relates to a piece of Spanish legislation which does not appear to be enforced.

- 2.3 We would expect that the CMA would present significantly stronger evidence than it has provided so far to be the first competition market authority to introduce price regulation in the funerals market, which is such a dynamic market with a large number of players, diverse business models and heterogenous products. Instead, the evidence points to a broadly well-functioning market, indicating that the introduction of a price control for at-need funerals would be disproportionate and unfounded.
- 2.4 In contrast, we note that the CMA appears more tentative about introducing price regulation for crematoria – using language like ‘should we consider that it be required’ – than it is about price regulation for funeral directors.¹⁴ This is unexpected and inconsistent given the CMA’s findings about the crematoria market, including:¹⁵
- 2.4.1 ‘the provision of crematoria services tends to be concentrated’.
 - 2.4.2 ‘84% of crematoria in the UK do not have a competitor within a 20-minute cortege drive time and 50% do not have an alternative within a 30-minute cortege drive time’.
 - 2.4.3 ‘local authority crematoria do not respond to entry in terms of the prices they set’.
 - 2.4.4 ‘On average, private crematoria that have experienced entry tend to increase rather than decrease their fees.’
 - 2.4.5 ‘market entry tends to be costly (there are high initial sunk costs required to enter).’
 - 2.4.6 ‘Price/quality differentials seem to have a very limited impact on the choice of crematoria’.
 - 2.4.7 ‘In real terms, average local authority and private cremation fees have increased by 37% and 48% respectively between 2008 and 2018.’
 - 2.4.8 ‘the characteristics of the crematoria sector that have allowed crematoria operators to set prices at above the competitive level and to increase prices over the period of our analysis could remain in future.’
- 2.5 Furthermore, the long-term trend towards greater uptake of low-cost options in the market – such as simple funerals – is likely to result in cremation fees representing a higher proportion of the overall cost for many more customers.
- 2.6 We also note that funeral directors professional fees in real terms have fallen over the last four years, while the average cremation fees reported by the CMA in its working paper ‘Funeral directors pricing level and trends’ show an increasing trend of cremation fees above inflation.^{16 17} This is also confirmed by the latest issue of the Royal London survey report which shows that over the 2014-19 period, funeral director costs have fallen by over 4% in nominal

¹³ Oxera (2019), ‘Funerals regulation in comparator countries’.

¹⁴ CMA (2020), ‘Remedy options for regulating the price of crematoria services’, paras. 1, 35.

¹⁵ CMA (2020), ‘Remedy options for regulating the price of crematoria services’, para 42-46.

¹⁶ CMA (2020), ‘Funeral directors pricing level and trends’, table 5.

¹⁷ Co-op response to the CMA’s working paper ‘Funeral directors pricing level and trends’, Figure 2 and Table 1.

terms;¹⁸ as the cumulative RPI rate over the period was equal to 12.8%. It follows that, in real terms, funeral director costs have fallen by around 15%. Over the same period, burial and cremation fees have increased by around 25% in nominal terms (11% in real terms).¹⁹

2.7 Further, the CMA states that: 'Given that crematoria services are a relatively homogenous 'product', our current thinking is that we would identify a commonly purchased combination of cremation services and apply a maximum price to this 'benchmark package'.' Importantly, this rationale clearly does *not* apply to the services provided by funeral directors, where there is no 'one-size-fits-all'. It is therefore completely incoherent for the CMA to propose an almost identical remedy in two different markets where the very reason for proposing it in one market (crematoria) does not apply in the other market (funeral directors).

3. THE RELATIONSHIP TO OTHER PROPOSED REMEDIES IS INCOHERENT AND INCONSISTENT

3.1 We welcome the CMA's working papers on proposed remedies and appreciate the CMA's efforts to be transparent.

3.2 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:

3.2.1 The proportionality and effectiveness of any remedies need to be considered in the round. 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.

3.2.2 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.

3.3 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. We are also in the midst of responding to the very significant challenges of COVID 19 and we will also want to come back to the CMA as the situation develops.

¹⁸ Royal London, National Funeral Cost Index Report 2019.

¹⁹ Royal London, National Funeral Cost Index Report 2019.

3.4 The relationship between this proposed price control and the other remedies in the CMA's proposed package is incoherent and inconsistent.

3.4.1 First, any form of price control would require regulation of quality in order to avoid a 'race to the bottom'. The CMA have recognised the need for quality regulation particularly in the care of the deceased which "is of considerable importance" to consumers.²⁰ While the CMA has separately proposed regulation of quality, the details about the proposed quality regulation are still unclear.²¹ The CMA has not demonstrated that the quality regulation would be sufficient to mitigate the unintended consequence of a price remedy leading to a 'hollowing out' of quality. This is in large part because the CMA has not analysed how the different remedies would interact.

3.4.2 Second, the principle of rigidly defining an expansive 'benchmark' funeral package which would in all likelihood become the 'default' package for most of the market, is at odds with any attempt to introduce more consumer choice. Information and transparency remedies aimed at proactively informing consumers of the costs of various components of a funeral would result in greater variation in customer choice and personalisation. Any benchmark package would create inflexibility, regardless of the definition of the benchmark package. Despite other options being available, the single benchmark package would become the default option, which would have the effect of reducing the range of consumer choice. Indeed, the CMA recognises that 'less choice' is defined as a detrimental effect for consumers.²² Defining a benchmark package which becomes a focal point for customers contrasts with consumers' desire for a personalised funeral in which they are able to say their last goodbye or celebrate their loved one's life in line with their wishes and personal values.

3.4.3 Third, it is also apparent that the CMA has not considered how a price remedy would interact with the scope of the proposed local authority tendering remedy. For example, funeral directors might be less willing to offer lower prices to local authorities if that price was used to set the price cap for the rest of the market. Put simply, a funeral director cannot offer preferential prices to all consumers without either losing money and going out of business or reducing quality to unacceptable levels. Further, a local authority tendering remedy would likely reduce volume for funeral directors which were not selected by the tendering process; therefore increasing the amount of fixed costs that would have to be recovered from each funeral.

3.4.4 Fifth, there is a logical inconsistency in the CMA's apparent view that other remedies would be sufficient to 'stimulate competition and choice at prices below the level of the benchmark price cap'.²³ If it is indeed possible to stimulate competition and

²⁰ CMA (2020), 'Quality regulation remedies', para. 1.

²¹ CMA (2020), 'Quality regulation remedies'.

²² CMA (2020), 'Information and transparency remedies', para. 9.

²³ CMA (2020), 'Remedy options for regulating the price of funeral; directors service at the point of need', para. 51.

choice using less intrusive remedies (such as price transparency) then it is by definition disproportionate to introduce highly intrusive price regulation.

- 3.5 Furthermore, the CMA has not demonstrated that any package of remedies **excluding price regulation would be ineffective**. The CMA is also proposing a range of quality regulation, a whole suite of information and transparency regulation, and the regulation of crematoria. We believe that a package of remedies excluding price regulation would be effective in addressing the alleged competition problems in the at-need funeral market.
- 3.6 As described in the 2019 Oxera paper ‘Price regulation of UK at-need funerals’²⁴ (hereafter referred to as the Oxera price regulation paper’), the CMA’s concerns about the market relate predominantly to demand-side issues that we consider best described by the CMA’s category ‘Information shortfalls and behavioural biases’.²⁵ The CMA guidance explains that such issues are best addressed through informational remedies and market-opening measures (as opposed to price regulation).²⁶
- 3.7 Regulatory best practice is to introduce intrusive remedies only when less intrusive remedies have been shown to be ineffective. Therefore the CMA should give the package of other remedies time to impact the market, before turning to a remedy which could have such harmful side effects.
- 3.8 Indeed, if evidence supported the introduction of a price control as a last resort in the absence of other, less-intrusive remedies (which it does not), it would be best introduced by a sector-specific regulator which would then have the responsibility to enforce the regulation, monitor compliance, and carry out ex post evaluation of its effectiveness.

4. THE REMEDY WOULD CAUSE A NUMBER OF HARMFUL UNINTENDED CONSEQUENCES

- 4.1 As described in the Oxera price regulation paper,²⁷ this market exhibits a number of characteristics that make it a less suitable candidate for price regulation than most other price-regulated sectors. These market characteristics make price regulation complex, costly and risky (in terms of the potential to inadvertently distort the market):
- 4.1.1 **Market structure and dynamics:** a large number of players; diverse business models; small share of the largest companies’ supply; and a dynamic market.
 - 4.1.2 **Product offering:** heterogeneity of products; and a non-measurable and non-observable aspects of quality. In our experience of providing funerals for countless customers across the country, there is no ‘one-size-fits-all’ when it comes to a funeral – each funeral is specific to each person. Funerals are not a commodity service.
- 4.2 The CMA considers a limited list of possible unintended consequences. However, the CMA: (i) underestimates how likely these risks are, (ii) underestimates the scale of the disruption

²⁴ Oxera (2019), ‘Price regulation of at-need funerals’, 4 November.

²⁵ CMA (2019), ‘Funeral directors and crematoria services. Market investigation. Statement of issues’, para. 68.

²⁶ Competition Commission (2013), ‘CC3 (Revised)—Guidelines for market investigations: Their role, procedures, assessment and remedies’, April, p. 83, Table 1.

²⁷ Oxera (2019), ‘Price regulation of at-need funerals’, 4 November.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

and distress to customers that would be caused if the risks materialise, (iii) does not consider all the likely unintended consequences, and (iv) proposes a limited set mitigation strategies which are either wholly inadequate or would cause more problems than they would solve. Unintended consequences listed by the CMA include the following, with our comments below:²⁸

a. *'The risk that an effective compliance and monitoring regime cannot be implemented across all providers of funeral director services due to the fragmented nature of the sector and the large number of small businesses.'*

4.2.1 This unintended consequence is likely to occur and would be harmful to consumers. The CMA's proposal for excluding many funeral directors from the price control would render the remedy ineffective and distortionary.

4.2.2 As discussed in the 'Oxera price regulation paper', the CMA has not found any examples of where price regulation has been applied to such a fragmented market.²⁹

4.2.3 Further, the CMA international comparisons study comes to the same conclusion as the Oxera paper on international comparisons: there are no instances of price regulation of funerals.³⁰ There is therefore no positive evidence that the CMA's proposals can be implemented in this market and strongly suggests that price regulation is not an appropriate remedy.

4.2.4 A price control would be ineffective in constraining the behaviour of small independent funeral directors, while distorting the market (e.g. if only large funeral directors complied).

4.2.5 Therefore, any price control would need to be designed such that it would be possible to implement for all funeral directors, including small, independent funeral directors (see below for the rationale).

b. *'The risk that the maximum price level becomes a focal point and that some providers increase prices to the level of the price control rather than setting an efficient price, which could be significantly below the maximum price set.'*

4.2.6 The Oxera price regulation paper explains that a price control as proposed by the CMA 'creates a risk that firms price at the cap, regardless of cost, as this is perceived to be 'acceptable''.³¹ This risk would be very harmful to consumers, as it would reduce price competition and lead to higher prices.

4.2.7 The CMA's first proposal for mitigating this risk – by setting the level of a price cap at a relatively low price point – is unsatisfactory, as it would directly lead to the opposite unintended consequence outlined by the CMA in para. 75(d) and discussed further below: that prices are set below costs. This would cause far greater consumer harm as it would reduce quality and reduce the option for people

²⁸ CMA (2020), 'Remedy options for regulating the price of funeral; directors service at the point of need', paras 75-76.

²⁹ Oxera (2019), 'Price regulation of at-need funerals', 4 November.

³⁰ Oxera (2019), 'Funerals regulation in comparator countries'.

³¹ Oxera (2019), 'Price regulation of at-need funerals', 4 November, p.21.

to personalise and celebrate their loved ones life in the way they value the most. Clearly, this mitigation strategy would not reduce consumer detriment.

4.2.8 The CMA's second proposal for a mitigation strategy is to introduce information and transparency remedies which would encourage competition below the level of the price cap. However, if information and transparency remedies would be effective in stimulating more competition then there would clearly be no need for price regulation (see section 3 for more detail on the incoherence of the CMA's proposals). In other words, this mitigation strategy would either be ineffective or render price regulation unnecessary. We recognise that the CMA may describe the price control as a 'safeguard' option, in case the other remedies are not effective. However, it would only be a 'safeguard' option if the level of the price cap was set at a high level.

4.2.9 In summary, the CMA does not propose an effective mitigation strategy and should recognise that price regulation is not appropriate in this market.

c. *'Specification risks which could arise if the price control cannot be designed with sufficient clarity to provide an effective basis for monitoring and compliance.'*

4.2.10 The specification risk is in particular prevalent given the funeral market's characteristics. In Co-op's experience consumers wish to personalise their funeral offering. This is also underlined by a number of survey findings, including the CMA's own consumer survey.³² The average consumer will wish to add services to the 'benchmark' package, remove other services and/or upgrade the quality or standard of the product of services such as the type of limousine, hearse or coffin. This risk is highly likely (given the propensity for consumers to tailor their funeral package), and would result in the price control not helping bereaved people.

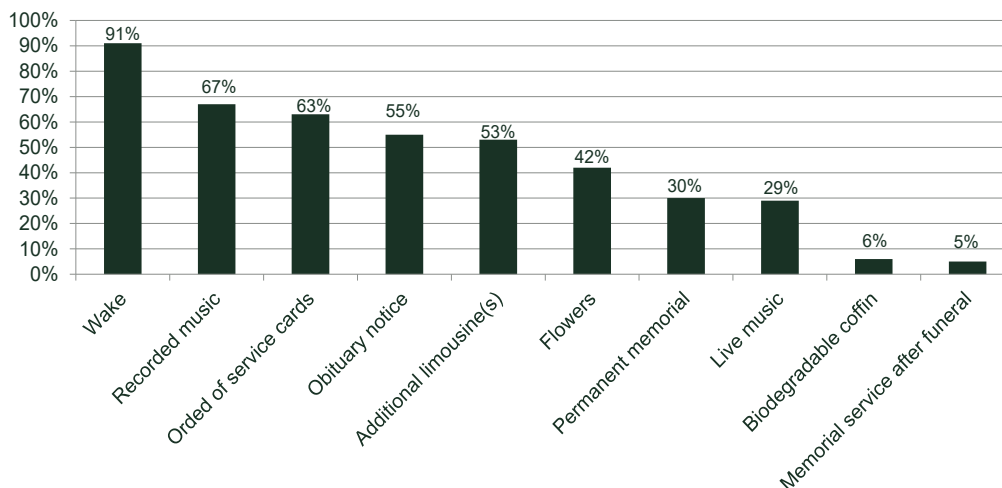
4.2.11 A 2017 YouGov report shows that a significant number of funerals features extras, which were explicitly requested by clients.³³ The figures reported aggregate all funerals, but there is additional variation across religious, humanist and environmentally friendly funerals. Attention to quality and personalisation can also be seen from the fact that one in seven funerals organised in 2017 included a 'special request' (e.g. sport team kit, wearing bright colours, alternative transport, turning ashes into a diamond etc.)³⁴

³² CMA (2020), 'Consumer survey results', tables 5 and 6.

³³ YouGov (2017), 'Funeral planning 2017', pp. 31, 40.

³⁴ SunLife (2017), 'Cost of dying report 2017', p. 16.

Figure 1 Popularity of personalised features in funerals (% of funerals organised in 2017)



Source: YouGov (2017), 'Funeral planning 2017', pp. 31, 40.

- 4.2.12 In a 2019 [redacted] survey, carried out on behalf of Co-op, respondents quoted the ability to personalise a funeral as the [redacted] most important characteristic when choosing a funeral director.³⁵
- 4.2.13 Evidence of personalisation can also be seen in the large amount of variation it takes a funeral director to arrange and conduct a funeral. A time and motion study [redacted].³⁶ This evidence also points to how every funeral is unique, with wide variations in the needs of the loved ones and deceased, and the subsequent cost to the funeral director in providing quality service to deliver what each consumer wants.
- 4.2.14 The CMA's first proposed mitigation strategy is to impose 'sub caps'. It is unclear how the imposition of further, more granular caps would avoid this risk. Clearly, multiple sub caps would increase complexity and reduce the feasibility of the remedy. Moreover it is unclear how sub-caps would work in practice: would there be a different sub price cap for every single possible choice of hearse (e.g. age, size, manufacturer, style) and coffin (we currently offer 30 different coffins³⁷)?
- 4.2.15 The CMA's second proposed mitigation strategy is to impose cost reflectivity on certain items outside the scope of the 'benchmark' package. Needless to say, increasing the scope of the products included in the price cap would not make the remedy more feasible to enact. We discuss this further in section 6.
- d. *'Price controls can directly override market signals which may result in distortion risks, such as a reduced incentive for participants to compete.'*
- 4.2.16 As we have demonstrated in our responses to the CMA working papers, prices of at-need funerals are already at 'competitive levels' – there is no excessive profitability. There is no need to 'reset' prices. In fact, given the competitive nature of pricing in the market, any attempt to 'reset' prices would cause lasting consumer harm. Indeed, as discussed in para. 4.3.1, the CMA must also consider the changing

³⁵ [redacted].

³⁶ PA Consulting (2015), 'At Need Activity Analysis Final Report', 14 October, slide 41.

³⁷ <https://www.coop.co.uk/funeralcare/coffins>

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

nature of the funerals market such as the trend towards lower-cost options, rather than only looking at the historic position of the market.

- 4.2.17 Therefore the risk of a price control reducing prices below costs appears high, and the consumer harm would be substantial: market exit; reduced market entry; lower quality services; greater incentive to ‘upsell’ unnecessary services in order to avoid exit.
- 4.2.18 The CMA’s proposed mitigation strategy is to set the level of the price cap with regard to costs and profitability. However, in para. 62 the CMA discuss using an unclear and simplistic methodology to set the level of the price cap, which would not guarantee that the price cap is set to be high enough to avoid these risks of funeral directors being unable to meet consumers preferences. In short, this would result in less choice and lower quality for bereaved people.
- 4.2.19 We also note that the impact of the risks of setting the price too high or too low are not symmetric. There would be little short term impact from the setting the price too high, and the price control could be adjusted downwards after an appropriate time period. Whereas there would be significant short term impact from setting the price too low, in particular the hollowing out of quality and effectively limiting consumers in their option to personalise the funeral.
- 4.2.20 There is also a significant risk of long-term damaging consequences from price control on the funerals market, even if the control is only in place for a short period of time. For example, there are likely to be fewer ‘barriers to market exit’, than barriers to market entry – not all firms that exit the market will be able to re-enter if the price control was removed. Therefore the CMA should in principle be conservative and err on the side of setting the level of any price control at a relatively high level.
- e. *‘Circumvention risks which could occur if the price control creates incentives for providers to make changes to other products/services, including a reduction in quality.’*
- 4.2.21 The CMA recognises that the proposed price control would give funeral directors the incentive to ‘upsell’ more items on top of the ‘benchmark’ package, which would cause consumer detriment.
- 4.2.22 The CMA proposes two mitigation strategies for this risk. First, that cost reflectivity or ‘sub caps’. As discussed above, we do not see how such measures would practically work while retaining choice and flexibility for the consumer.
- 4.2.23 Second that the independent platform and other information and transparency remedies would result in well-informed consumers who would not buy the ‘upsold’ items. However, (as discussed above and in section 3) if information and transparency remedies would be effective, then there would be no need for any price regulation. For our full views on the independent platform, see our response to that working paper.
- 4.2.24 The CMA also recognises that the price control could lead to fewer consumers purchasing low-cost options. This is likely because the ‘benchmark’ package would become the ‘default’ option for consumers, regardless of any circumvention efforts by funeral directors. The impact of this would be to increase the costs of funerals for the most vulnerable consumers. The CMA does not suggest any mitigation

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

strategies for this potentially serious unintended consequence. It would also, for those who want to buy a more bespoke product, potentially limit what they are able to acquire curtailing consumer choice and limiting the ability for consumers to say goodbye in the way they would want to.

- f. *'Increased compliance costs or inability to comply with price regulation could lead to the exit of some market participants or result in higher barriers to entry. This may have adverse effect on competition or distort the market in an unintended way.'*

- 4.2.25 Similar to (a) above, this unintended consequence may occur and would be harmful to consumers. There is therefore no positive evidence that the CMA's proposals can be implemented in this market. However, the CMA's proposal for excluding many funeral directors from the price control would render the remedy ineffective and distortionary.
- 4.2.26 An unfeasible price control would be ineffective in constraining the behaviour of small independent funeral directors, while distorting the market (if only large funeral directors complied).
- 4.2.27 We do not believe any price control would be justified but if it were it would need to be designed such that it would be possible to implement for all funeral directors, including small, independent funeral directors (see below for the rationale).
- 4.3 In addition to these unintended consequences, there are other risks that the CMA must also consider:
- 4.3.1 **Less innovation.** As explained in the response to the international comparisons working paper, innovation has been rapid in this market. Recent trends include: growth of low-cost funerals; increasing uptake of cremations; growth of non-traditional options, such as 'green funerals'; greater use on online research and social media; increase personalisation of funeral services; growth of pre-need funerals; and increasing uptake of cremation without ceremony. For example, the national uptake of Co-op's Simple funeral increased from [X]% of at-need funerals in 2015 to [X]% in the first half of 2018.³⁸ Other substantial changes in ways to deliver a funeral could also emerge such as mobile funeral homes, or new techniques such as alkaline hydrolysis/resomation. Responding to these trends and changing consumer preferences will require flexibility on the part of funeral directors. This flexibility would be reduced if funeral directors had to offer a 'benchmark' package with limited ability to amend the service offering.
- 4.3.2 It is surprising that the CMA did not consider this unintended consequence given the CMA's 2020 report 'Regulation and Competition: A Review of the Evidence', which found that 'There is a general sense that regulation can struggle to cope with changing markets and innovation'. The CMA also highlighted that 'Innovation is not just about the introduction of new technologies or scientific breakthroughs; there can also be innovation in business models. In terms of dealing with new technologies or business models, there can be a difficulty for policymakers and regulators in keeping up with the pace of innovation.'

³⁸ Co-op response to the CMA working paper on Branch level analysis of the take-up of simple funerals, paras 1.4-1.5.

- 4.3.3 The CMA concluded that ‘Policymakers and regulators should carry out strategic, forward-looking reviews of regulation. These should seek to evaluate the external factors that could have an important impact on how markets evolve in the future; to identify potential sources of disruption whether from inside or outside of those markets; and, assess how regulation might need to change and adapt to accommodate such changes.’ Therefore the CMA must consider fully the damaging impact of the proposed price control on innovation in at-need funerals.³⁹
- 4.3.4 **Less consumer choice.** As set out in the Oxera 2018 paper on disclosure in at-need funerals, the ‘default bias’, whereby ‘options and services that are presented as the default are more likely to be selected’, could lead consumers to select a ‘default’ funeral.⁴⁰ The ‘benchmark’ funeral, as currently defined by the CMA, appears likely to become the default option. Even though other options may also be available, the default bias would mean that the single benchmark package could have the effect of reducing the range of consumer choice. Indeed, reduced consumer choice is likely to mean funerals become more of a commodity rather than a personalised and bespoke product. Focusing on a ‘benchmark’ package risks restricting consumers in their choice of funerals and the option to personalise could mean that loved ones are limited in the way they can say goodbye and celebrate the life of their loved one. It could mean that funeral directors who specialise in more bespoke products, at potentially a justified higher price, would need to offer something which is not what they, or the families they support, would want
- 4.3.5 **Distortion of the pre-need market.** The CMA has not considered the potential unintended consequence that a price control would have on the pre-need market. If a price cap on at-need funerals is set significantly lower than existing pre-need plans already sold, customers may decide to cancel these plans. This would mean consumers would incur cancellation costs and funeral directors would face an increase in administrative burden not considered by the CMA. The result of this would be to increase the costs of providing at-need funerals – which would ultimately result in higher prices paid by bereaved people.

5. IT IS UNCLEAR HOW THE PRICE FOR THE ‘BENCHMARK’ FUNERAL WOULD BE SET

Setting the level of the price control

- 5.1 The CMA does not specify how the level of the price control would actually be set. This is a crucial piece of information that would determine the level of intrusiveness in the market – it is difficult to respond to a proposal for a price control when the level of the price control is described in such vague terms.
- 5.2 The CMA states that the price level would be set with reference to current at-need prices in the UK, ‘such as for example, median price, 25th percentile, 60th percentile’.⁴¹ This leaves open the possibility that the CMA would introduce a price control reducing competitive prices by 75% – which would clearly result in prices below costs and the market exit of almost all funeral directors. This would result in significant consumer harm.

³⁹ CMA (2020), ‘Regulation and Competition: A Review of the Evidence’, January, paras. 1.32, 4.46, 6.3.

⁴⁰ Oxera (2018), ‘Disclosure in at-need funerals’.

⁴¹ CMA (2020), ‘Remedy options for regulating the price of funeral; directors service at the point of need’, para. 62.

- 5.3 In any case, in our experience of providing funerals for countless people across the country, there is no ‘one-size-fits-all’ when it comes to a funeral – each funeral is specific to each person. Funerals are not a commodity service. Setting a price control using ‘comparable products’ would mean that many loved ones would be provided with a service package that does not meet their expectations. Further, if families who would prefer a high quality funeral ended up choosing the ‘benchmark’ funeral because of its prominence, they would receive a lower quality of service than they expect.
- 5.4 It would appear that the CMA is more concerned about the risk of setting the price cap too high (so as to be ineffective in reducing prices), rather than too low. This is perverse, given that the impact of a price cap that is set too low would be far more damaging for consumers, due to:
- 5.4.1 **Market exit.** Funeral providers would exit the market, rather than operate at a loss. Alternatively, small funeral directors may consolidate in order to gain efficient scale. This could lead to a reduction in competition at a local level.
 - 5.4.2 **Reduced market entry.** New entrants would be deterred from entering the market.
 - 5.4.3 **Lower quality services.** Funeral directors would be required to cut costs, and would deliver a lower quality of service to their customers as well as a reduced range of options and the ability to personalise the funeral.
 - 5.4.4 **Greater incentive to ‘upsell’ unnecessary services.** Funeral directors would be incentivised to gain revenue through other services and products, and may ‘push’ consumers into purchasing additional items in order to avoid making financial losses.
- 5.5 Any price control must be compatible with a variety of different business models, and the price would need to be high enough to allow for a variety of providers in the market (i.e. it should not be loss-making for an efficient provider on a stand-alone basis – as if a funeral director sold no other funerals).
- 5.6 In summary, it is difficult to evaluate in detail a proposed price control where there is no clarity over how the level of the price control would be set. Nevertheless, however any level of price control price control in this market is set, it would remain a disproportionate remedy with damaging consequences for consumers.

6. IF IT WERE IMPOSED PRICE REGULATION IN THE FUNERALS MARKET IN THIS MARKET THE SCOPE OF THE ‘BENCHMARK’ FUNERAL IS NOT PROPORTIONATE

- 6.1 The CMA states that ‘a proportionate remedy is one that [...] is no more onerous than needed to achieve its aim [and] is the least onerous if there is a choice between several effective measures’. However, the CMA has not considered less intrusive forms of price regulation than the proposed price control on the ‘benchmark’ funeral package, which is expansive, yet inflexible and therefore highly likely to inhibit customer choice and innovation in the future.

Treatment of disbursements

- 6.2 The CMA’s proposal excludes disbursements from the ‘benchmark’ funeral package, but would require funeral directors to pass through disbursements at cost (without a mark-up). The CMA defines disbursements as ‘burial fees, cremation fees, flowers and stationery etc.’

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- 6.3 In our submission 'Discussion of potential non-pricing remedies'⁴² (now published on the CMA website), we support this treatment of disbursements in principle, although we disagree with the CMA's new definition of what costs qualify as disbursements.
- 6.4 We support prohibiting a mark-up on disbursements as a remedy, regardless of any proposal to introduce a price control, because, as we have already stated, 'it would deal with a concern that this may be a hidden means to increase costs to consumers and would work hand in hand with regulation of certain third party disbursements, especially cremations, which make up the vast majority of third party disbursements (for cremation funerals).'⁴³
- 6.5 However, the CMA's proposal for a price control appears to conflate the different types of service which funeral directors provide to consumers (unlike previous CMA documents). Indeed, the CMA's 'Final report and decision on a market investigation reference' clearly defines three types of service, distinguishing between 'intermediary services' and 'discretionary services':⁴⁴
- 6.5.1 'Funeral directors provide a wide range of services that fall into three broad categories:
- a. 'Professional services, typically including:
 - o 'Guidance and support to the family;
 - o 'Collection and care of the deceased; and
 - o 'Organisation of the funeral and supply of goods and services to facilitate the arrangements (e.g. coffin, hearse, limousine(s), pallbearers etc);
 - b. 'Intermediary services between the customer and third parties, such as: the crematorium or burial site; the doctor and the minister/celebrant; and
 - c. 'Discretionary services that are provided by the funeral director directly or as an intermediary between the customer and third parties, such as: memorials; death notices; venue hire and catering; flowers; order of service etc.'
- 6.6 The distinction between intermediary services and discretionary services is important. Intermediary services are provided to all consumers. Discretionary services are optional; consumers may choose to forgo the service, or purchase it from elsewhere. We support prohibiting mark-ups on intermediary services (for the reasons outlined above), but we do not support prohibiting mark-ups on discretionary services for the following reasons.
- 6.6.1 Discretionary services (unlike intermediary services) are more salient for consumers when deciding on what funeral they wish to purchase. This is because consumers must make proactive decisions over whether each discretionary services is to be purchased or not. It is therefore unlikely that discretionary services are 'a hidden means to increase costs to consumers'.⁴⁵
- 6.6.2 Discretionary services (unlike intermediary services) are by definition optional for consumers. Prohibiting mark-ups on discretionary services would therefore mean

⁴² Co-op (2019), 'Discussion of potential non-pricing remedies', 7 November.

⁴³ Co-op (2019), 'Discussion of potential non-pricing remedies', 7 November, para 2.14.

⁴⁴ CMA (2019), 'Funerals market study Final report and decision on a market investigation reference', 28 March, para 4.2.

⁴⁵ Co-op (2019), 'Discussion of potential non-pricing remedies', 7 November, para 2.14.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

that funeral directors have to incur all costs (including the costs of arranging the discretionary services) from the core (non-discretionary) funeral package. This would introduce a new cross-subsidy: from those consumers who do not purchase discretionary services to consumers who do purchase discretionary services. This would increase the costs of funerals for some low-income consumers.

- 6.6.3 Funeral directors currently have the incentive to use their bargaining power to reduce the costs of discretionary services. Prohibiting mark-ups on discretionary services would remove this incentive and result in higher prices for consumers. This risk is much lower for intermediary services as most of these services, such as burial fees, cannot be negotiated as there is no choice of provider. In addition, if the CMA introduces price regulation of cremations, these services will already be priced at a competitive level.
- 6.6.4 Prohibiting mark-ups on discretionary services to reduce upselling would make the proposed price control almost all-encompassing. Consumers could choose the 'benchmark' funeral package, and add a large number of discretionary services – ending up with a funeral package that resembled a high specification package at significantly lower cost (i.e. the opposite risk of upselling unnecessary services). This would likely result in funeral directors operating at below costs, leading to significant unintended consequences, such as: market exit; reduced market entry; and lower quality services.
- 6.6.5 The CMA has not considered the cost to funeral directors arranging disbursements such as flowers and stationery. Co-op's consumers often request personalised floral arrangements, bespoke stationery. This involves additional work to Co-op including coordination, full design of proof, etc. Therefore, the CMA's requirement to pass through disbursements without mark-up would disincentivise funeral directors to allow for personalisation, restricting consumers in their ability to arrange a funeral that reflects the life their loved one lived.
- 6.6.6 In addition, Co-op honours many 'special requests' from consumers, ranging from personalising the viewing room with pictures or sport team kit to turning the ashes into a diamond. It is not clear how these extras might be treated and whether this would be categorised as a disbursement. [§]. It is not clear how the CMA will deal with such features and how this might affect consumers' ability to personalise.

National vs regional price cap

- 6.7 The CMA proposes a national price level, rather than regional price caps.⁴⁶ The CMA's rationale is twofold.
- 6.8 First, to ease of monitoring and enforcement. However, it is not significantly more onerous to monitor and enforce a handful of regional price caps.
- 6.9 Second, 'the risk that unintended market distortions may arise due to variation in the level of a price control across the UK, particularly at the border of geographic areas or regions if different maximum prices have been set'. Presumably the CMA is referring to the fact that two funeral homes could be close to each other, but either side of a regional border and therefore regulated at a different price level.

⁴⁶ CMA (2020), 'Remedy options for regulating the price of funeral; directors service at the point of need', para. 69-73.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- 6.10 There is currently no evidence of market distortion due to variation in the price levels across the UK. For example, the maximum price of Co-op's Simple funerals is set at a different level in Scotland and England and there are no obvious signs of 'border effects'.
- 6.11 However, there is also the fact that costs of funeral provision differ across the UK, and there could be serious unintended consequences from adopting a single price cap. As we have previously indicated in response to a RFI, total costs differ per branch. Key differences in costs across branches are primarily driven by personal and occupancy costs, which varies significantly by region.⁴⁷ Personnel and occupancy costs form almost two thirds of the operating costs of branches and are centres. These costs are dependent on the local labour and property market and so significant differences can arise between branches in different regions. Analysis of Co-op's total branch costs per funeral (excl. disbursements) in different regions shows that, for example, costs in London are significantly higher than in the rest of England, while costs in Scotland are significantly lower than in Wales.
- 6.12 Thus, by definition, any national price cap would be set:
- 6.12.1 *below* the current level of competitive prices in some regions. This would cause market exit, consolidation and less market entry in higher cost parts of the country.
- and/or** (these effects are not mutually exclusive):
- 6.12.2 *above* the current level of competitive prices in some regions. This would cause the remedy to be ineffective in lower cost parts of the country, and the price cap could become a focal point in those regions (see discussion on unintended consequences above).
- 6.13 These effects are likely to be greatly exacerbated in the funerals market, where competition and pricing takes place at local level. 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. A national price cap would therefore mean that these effects are much more likely to arise as most operators will not be able to average their costs nationally and operate against a nationally competitive average price cap. A local operator in a lower cost market, such as the north-east, will likely be able to price substantially below any nationally set price cap and therefore out-compete national players (who will need to reflect average costs across the country in their prices and will therefore be unable to price substantially below the cap). Conversely, in high cost areas, such as London, a price set at the level of a national cap may well drive out local providers who cannot recover their costs against a national price cap and will not be able to expand to lower cost areas to mitigate the effects of this. 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) and for small operators in high cost areas, who will simply be unable to cover their costs in high cost areas and will exit⁴⁸

⁴⁷ Coop RFI response of 10 June 2019 to RFI dated 10 May, paras 6.1 - 6.3.

⁴⁸ See also Co-op's response to the CMA's working paper on information and transparency remedies.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- 6.14 In conclusion, if the CMA were to adopt price control (which we do not believe is justified) it would need to choose between two different forms of unintended consequence: market distortion in 'border areas', versus market distortion across whole regions of the country. In our view, while any form of price regulation would be disproportionate, a national cap would further worsen the already significant distortions caused by price regulation.
- 6.15 Finally, it is entirely unclear how national pricing would interact with the CMA's local authority tendering proposal, which would inherently produce local pricing for each area.

Cremations vs burials

- 6.16 The CMA does not consider the distinction between burials and cremations. Burials are generally more costly for funeral directors than cremations, due to the requirement to provide more staff on the day of the funeral (to carry the coffin).
- 6.17 If the CMA imposed a price cap, despite this not being justified, it would need to look at two price caps; one for burials and one for cremations. Having a single price cap for both burials and cremations would mean that either:
- 6.17.1 Burials become unprofitable for funeral directors. This could lead to:
- a. Market exit for those funeral directors with significant volumes of burials.
 - b. Less market entry.
 - c. Incentives for funeral directors to offer cremations only (i.e. restrict consumer choice), or 'push' consumers towards cremations.
 - d. Incentives for funeral directors to 'upsell' more services on burials.
 - e. Customer choice being significantly impacted in an area where there will be clear preferences and cultural and religious considerations.
- 6.17.2 The price control would include significant 'headroom' on cremations. This would undermine the effectiveness of a price control. In addition, there would also be the incentives for funeral directors to offer cremations only (i.e. restrict consumer choice), or 'push' consumers towards cremations.

7. ANY PRICE CONTROL WOULD HAVE TO APPLY TO ALL FUNERAL DIRECTORS

- 7.1 Any price control would need to be designed such that it would be possible to implement for all funeral directors, including small, independent funeral directors.
- 7.2 As explained in the Oxera price regulation paper⁴⁹, given the small share of the largest players, regulating only large players would be ineffective at controlling prices faced by the majority of consumers. According to the CMA, there are over 1,300 funeral directors in the UK, operating between 5,000 and 7,000 branches between them.⁵⁰ The three largest funeral directors have a combined share of less than 30%.⁵¹
- 7.3 In addition, putting a framework of regulation around some players and not others would mean sending a signal to consumers that the regulated players are a safer/better option than the

⁴⁹ Oxera (2019), 'Price regulation of at-need funerals', 4 November.

⁵⁰ CMA (2019), 'Funerals market study – Final report and decision on a market investigation reference', para. 2.30.

⁵¹ CMA (2019), 'Funerals market study – Final report and decision on a market investigation reference', para. 2.31.

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

non-regulated firms. This, in turn, risks limiting the competitive pressure from these small and medium-sized competitors, which make up 70% of the market, and from new entrants.

7.4 On the other hand, the introduction of a de minimis threshold could incentivise funeral directors to remain at small scale, and not enjoy economies of scale (leading to higher prices for consumers). Therefore any price control remedy would have apply to all funeral directors in order to avoid further distorting competition.

7.5 Furthermore, many small funeral directors, according to the CMA's analysis, making excessive profits. The CMA have found evidence to suggest that smaller funeral directors have the potential to earn greater returns than larger funeral directors and that some of them are doing so.⁵² The CMA also notes that in 71% of local authorities where an independent is present an independent is the most expensive funeral director.⁵³

⁵² CMA (2020), 'Funeral Directors: Profitability Analysis', para. 214

⁵³ CMA (2020), 'Funeral Directors – price dispersion analysis', para. 33

Schedule

Responses to CMA consultation questions

In paragraph 101 of the Paper, the CMA invited comment on the following questions.

Invitation to comment – 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?

Co-op response:

We do not agree that a price control remedy would be proportionate or effective. This proposal for a price control is wide-reaching and intrusive, unclear in its details, and not evidence-based. The evidence base cited by the CMA in other working papers does not support the introduction of a price control. As explained in detail in our responses to the other working papers, the evidence points towards a well-functioning and competitive market with high levels of consumer satisfaction. Price control of the at-need funerals market would result in several harmful unintended consequences, as outlined in our response above. Therefore, an imposition of price control regulation in this market would be an ineffective remedy and risks causing significant consumer harm.

- (b) Do you agree that the introduction of a price control remedy to be a necessary and proportionate solution (paragraph 19) to remedy any AECs and any resultant, or expected, detrimental effects on customers should they be found in this market investigation?

Co-op response:

The CMA has not demonstrated that any package of remedies *excluding* price regulation would be ineffective. The CMA is also proposing a range of quality regulation, a whole suite of information and transparency regulation, and the regulation of crematoria – we believe that a package of remedies excluding price regulation would be effective in solving the CMA’s concerns regarding at-need funerals. Indeed, the CMA can find no evidence that price controls for funeral have ever been introduced in another country.

Regulatory best practice is to introduce intrusive remedies only when less intrusive remedies have been shown to be ineffective. The CMA should give the package of other remedies time to impact the market, before turning to a remedy which could have such harmful side effects. The use of a price control remedy in the funerals market if imposed would be both unnecessary and disproportionate.

Invitation to comment – price control design considerations

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

Co-op response:

We agree if evidence supported the introduction of a price control (which it does not), it would need to be designed such that it would be possible to implement for all funeral directors, including small, independent funeral directors.

- (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)?

Co-op response:

We do not think there is a requirement to limit the application of any price control regulation to exempt certain providers. As explained in the Oxera price regulation paper⁵⁴, given the small and falling share of the largest players, regulating only large players would be ineffective at controlling prices faced by the majority of consumers. According to the CMA, there are over 1,300 funeral directors in the UK, operating between 5,000 and 7,000 branches between them.⁵⁵ The three largest funeral directors have a combined share of less than 30% and there is evidence that this share is reducing.^{56,57} Moreover, the CMA profitability analysis shows that small providers earn profits equal to or greater than those of the larger firms.⁵⁸

In addition, putting a framework of regulation around some players and not others risks sending a signal to consumers that the regulated players are a safer/better option than the non-regulated firms. This, in turn, risks limiting the competitive pressure from these small and medium-sized competitors, which make up 70% of the market, and from new entrants.

The introduction of a de minimis threshold could incentivise funeral directors to remain at small scale, and not enjoy economies of scale (leading to higher prices for consumers). Therefore any price control remedy would have apply to all funeral directors in order to avoid distorting competition.

- (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)?

Co-op response:

We do not agree that any price control should be based on the ‘benchmark’ funeral, as outlined by the CMA.

The CMA states that ‘a proportionate remedy is one that [...] is no more onerous than needed to achieve its aim [and] is the least onerous if there is a choice between several effective measures’. However, the CMA has not considered less intrusive forms of price regulation than the proposed price control on the ‘benchmark’ funeral package.

Though in theory a benchmark package could cause fewer unintended consequences than other forms of price regulation such as a cost-based approach, in practice an appropriate benchmark would be difficult to define. The principle of rigidly defining this ‘benchmark’ funeral package which would in all likelihood become the ‘default’ package for most of the market, is at odds with any attempt to introduce more consumer choice. In our experience customers are increasingly wanting more personalisation and choice of services from funeral directors. The

⁵⁴ Oxera (2019), ‘Price regulation of at-need funerals’, 4 November.

⁵⁵ CMA (2019), ‘Funerals market study – Final report and decision on a market investigation reference’, para. 2.30.

⁵⁶ CMA (2019), ‘Funerals market study – Final report and decision on a market investigation reference’, para. 2.31.

⁵⁷ See Co-op’s response to the CMA’s working paper on ‘company-level price and market share analysis’.

⁵⁸ CMA (2020), ‘Funeral Market Investigation–Funeral Directors: Profitability Analysis’, 20 February, paras 174, 214, 230.

CMA recognises that the price control could also lead to fewer consumers purchasing low-cost options. This would be to increase the costs of funerals for the most vulnerable consumers.

In addition, any form of price control would require regulation of quality in order to avoid a ‘race to the bottom’. While the CMA has separately proposed regulation of quality, the details about the proposed quality regulation are still unclear. The CMA has not demonstrated that the quality regulation would be sufficient to mitigate the unintended consequence of a price remedy leading to a ‘hollowing out’ of quality.

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

Co-op response:

We do not agree that any price control should be based on the ‘benchmark’ funeral, as outlined by the CMA. Fundamentally, a funeral is not a ‘commodity’ product but rather a bespoke service that should be able to fit the needs and preferences of consumers. This means that the range of services (and associated costs) varies significantly across funeral directors. Indeed consumers currently are asking for *more* personalisation, and setting a ‘standard’ benchmark funeral package would limit the ability of funeral directors to provide consumers with the service they want. In addition, the package outlined by the CMA does not discuss the level of standard that is to be provided for each of the product and services within the package, such as the required level of customer care, the level of care for the deceased, the standard of the vehicle, the standard of customer-facing facilities, nor does the CMA specify the type of hearse, coffin or limousine. This is discussed in detail above.

- (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?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), it would need to be designed such that it would be possible to implement for all funeral directors, including those that offer funeral services to specific ethnic or cultural groups.

The CMA should consider how the proposed price control would accommodate funerals which occur within 24 hours of death, or a specific numbers of days after death.

- (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)?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), the design of a price control should consider the following.

- **Analysis of funerals provided by Co-op from 2013 to 2019 shows that the proportion of at-need funerals for which a limousine was included decreased on a yearly basis.**
- **Analysis of funerals provided by Co-op from 2013 to 2019 shows that the proportion of at-need funerals for which embalming was included decreased on a yearly basis.**
- **Two services (e.g. at a church and then crematorium) do not need to be included.**

RESPONSE TO WORKING PAPER ON REMEDY OPTIONS FOR REGULATING THE PRICE OF FUNERAL DIRECTOR SERVICES AT THE POINT OF NEED

- **Collection of ashes (after cremation) is a commonly included part of funeral packages.**
- (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))?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), the time-based restrictions should be as follows.

- **Transportation of the deceased should be available 24 hours a day, seven days a week. This transportation would include 10 miles only.**
 - **Viewing of the deceased at the place of storage/funeral director's premises be limited to "office hours", which are 9am to 5pm, five days a week (rather than 8am to 6pm).**
 - **Provision of a hearse (or other appropriate vehicle, at the request of the customer – this may involve additional cost for the customer) direct to the nearest crematorium or cemetery at a date and time agreed with the funeral director and clearly described to the client.**
- (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)?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), cost reflectivity should be imposed on intermediary services, but not discretionary services (for the reasons outlined above). Intermediary services include the following:

- **burial: Minister or Officiant's fee; burial fees or interment of ashes; gravedigger fees;**
 - **cremation: Minister or Officiant's fee; cremation fees at a local crematorium; fees for cremation documents (e.g. doctor's fees).**
- (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))?

Co-op response:

A price control cap on average revenue per funeral would be even less effective and even more disproportionate; and would lead to more unintended consequences than the CMA's proposal for a price control on 'benchmark' funerals.

- (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))?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), then the same overall approach to the design of a price control should be adopted in Scotland as for England (for example, in scope of what is regulated, or in methodology for setting a cap). However, as we have indicated above, setting a national price cap is likely to have significantly distortive effects. Funeral costs and prices are already materially different in Scotland than in England and Wales, both because of different market conditions and different regulatory environments. For example, differences which arise from requirements to comply with the Burial and Cremation (Scotland) Act 2016, but also differences in the regime for certification of death in England and Wales which is more onerous than that in Scotland. Therefore, in our view a different price control would be required for Scotland.

- (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))?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), the CMA would need to choose between two different forms of unintended consequence: market distortion in 'border areas', versus market distortion across whole regions of the country. In our view (as described above), if the CMA were to adopt price control (which we do not believe is justified) it would need to choose between two different forms of unintended consequence: market distortion in 'border areas', versus market distortion across whole regions of the country. In our view, while any form of price regulation would be disproportionate, a national cap would further worsen the already significant distortions caused by price regulation. The evidence shows that there is significant regional cost variation in the supply of funerals and we see significant cost variation across our branches. As between Scotland and England/Wales, differences in regulatory requirement may drive (and continue to drive) some of these cost variations and therefore further justify a different price cap for each nation.

- (n) What are your views on the interaction of the Burial and Cremation (Scotland) Act 2016 with the proposal of price regulation in the UK (paragraph 74)?

Co-op response:

See above.

Invitation to comment – 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?

The CMA acknowledges 'the risk that an effective compliance and monitoring regime cannot be implemented across all providers of funeral director services due to the fragmented nature of the sector and the large number of small businesses'. We agree that this risk is high given the characteristics of this market. Further, the CMA comes to the same conclusion as the Oxera paper on international comparisons: there are no instances of price regulation of funerals. There is therefore no positive evidence that the CMA's proposals can be implemented in this market.

The CMA's proposal for excluding many funeral directors from the price control would render the remedy ineffective and distortionary, as it would not constrain the behaviour of small independent funeral directors, while distorting the market (e.g. if only large funeral directors complied).

There are also unintended consequences of setting the price cap too low, which would be damaging for consumers, such as market exit, reduced entry, lower quality services and greater incentive to 'upsell' unnecessary services. A low price cap would also limit the range of services funeral directors will be able to offer, meaning that many consumers will not have their specific preferences met.

If the evidence supported the introduction of a price control (which it does not), it would be best introduced by a sector-specific regulator which would then have the responsibility to enforce the regulation, monitor compliance, and carry out ex post evaluation of its effectiveness.

- (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))?

Co-op response:

If a price control were to be introduced, the compliance reporting requirements should be the same for all funeral directors. We do not consider it a large administrative burden for small funeral directors to comply with reporting requirements of the proposed price control remedy.

- Small funeral directors do not sell many funerals. The administrative burden reporting the necessary information in compliance with any regulation would be low.
- Small funeral directors do not have many staff. The administrative burden of educating staff on reporting requirements would therefore also be minimal.

- (q) Do you have any views or suggestions on designing and implementing an effective communication strategy to ensure that consumers, funeral directors and relevant third parties understand their rights and responsibilities if price regulation is introduced in the funeral industry? In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 94(c))?

Co-op response:

If the evidence supported the introduction of a price control (which it does not), the CMA should adopt the same communication strategy as it adopts for any other remedies.

We believe that consumers should be informed of any potential price regulation by intermediaries such as registrars, care homes, hospitals and health care providers and charities, amongst others. Intermediaries should be encouraged to inform the bereaved of a regulated benchmark package. We 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 consumers rights is delivered, and also on how to deliver such information sensitively and appropriately.

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.

- (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?

Co-op response:

We do not believe a price cap would be proportionate and would lead to more unintended consequences than positive benefits. If it were to be introduced, a substantial period would be required between the decision to impose a price cap and it coming into force both to consult widely and to ensure that the large number of small funeral directors are aware of a cap and able to comply. Prior recent examples, such as the introduction of pay-day lending by the FCA and energy price caps allowed for significant transition periods. When the FCA introduced payday loan caps, there was a period of a year between the FCA being given the duty to impose a cap and the coming into force of the cap, (with proposals published and consulted on 6 months prior to implementation).⁵⁹

Energy price caps were introduced 6 months after the regulator was given the duty to impose them; however the number of suppliers was considerably smaller and the concept of price caps already been introduced two years earlier (in relation to pre-payment meters).⁶⁰

We believe that considerably longer (at least two years) would be required in this market, to publish proposals, consult, set price caps and raise awareness of new obligations given the complexity and heterogeneity of funerals (and what that means for cap design) and the fact that suppliers in this market are a much larger and more dispersed group who will need support to comply. We believe that the consultation period would need to be long and iterative to manage these complexities (including to allow for testing) and that the post-consultation, pre-implementation period would have to be longer than in other industries to enable the CMA or a new regulator to advertise and support the large number of funeral directors to get ready for the price cap.

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

Co-op response:

We consider that having to work to a benchmark would involve funeral directors having to change the services offered as well as the cost base. This would impose a significant burden on all funeral directors. However, the administrative burden for small funeral directors to comply with the proposed price control remedy in terms of monitoring and enforcement would not be disproportionately high compared with larger funeral directors.

- **Small funeral directors do not sell many funerals. The administrative burden of ensuring that each funeral is sold in compliance with the regulation would be low.**
- **Small funeral directors do not have many staff. The administrative burden of educating staff about the regulation would be minimal.**

- (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)?

⁵⁹ see <https://www.fca.org.uk/publication/policy/ps14-16.pdf>

⁶⁰ <https://www.ofgem.gov.uk/publications-and-updates/energy-price-cap-will-give-11-million-fairer-deal-1-january>

Co-op response:

We consider that if a price control remedy is imposed in the funerals market, the CMA's suggestion of a 5-7 year time period is not appropriate. The CMA should consider how the price control will adapt to innovation, common cost shocks, cost inflation, and changing consumer preferences. If it were imposed, price regulation on at-need funerals would be the first price control in this market in the UK (and indeed in any country). Given this, and the fact that risks of getting it wrong are likely and would be hugely impactful, it would be prudent for the new regulatory body to review any price control after a significantly shorter period of time.

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

Co-op response:

Yes, the introduction of price control of at-need funerals would result in harmful unintended consequences. As set out in section 4, the CMA: (i) underestimates how likely these risks are, (ii) underestimates the scale of the disruption and distress to customers that would be caused if the risks materialise, (iii) does not consider all the likely unintended consequences, and (iv) proposes a limited set of mitigation strategies which are either wholly inadequate or would likely cause more problems than they would solve.

There are major risks which the CMA have not considered, as described in detail above: less innovation, less consumer choice and distortion of the pre-need market.