

## Funeral directors and crematoria services market investigation

### Dignity plc response to the CMA's working paper on remedy options for regulating the price of crematoria services, dated 20 February 2020

1. Dignity plc ("**Dignity**") welcomes the opportunity to comment on the CMA's working paper on remedy options for regulating the price of crematoria services (the "**Working Paper**"). This paper addresses the CMA's proposals for price regulation of crematoria only; Dignity's comments on the CMA's proposals on price regulation of funeral directors and on other remedies have been provided separately.
2. As the CMA notes in its working papers, before adopting a remedy the CMA needs to ensure that it is:
  - (i) **effective** at remedying, mitigating or preventing the identified adverse effect on competition ("**AEC**") or any detrimental effect of the AEC on consumers. The CMA needs to ensure the remedy is likely to be effective in achieving its aims and is practicable; and
  - (ii) **reasonable and proportionate**, being no more onerous than necessary to achieve its legitimate aim and not producing disadvantages that are disproportionate to its aim.
3. This analysis needs to be carried out for each individual remedy, and also for the remedy package as a whole. In this response, Dignity's comments focus on the remedy options set out in the Working Paper as individual remedies. Dignity reserves its position on whether the full package of remedies being considered by the CMA (including the information and transparency remedies, as well as the quality regulation and price regulation remedy options for funeral directors) is effective, reasonable and proportionate.
4. Dignity looks forward to engaging with the CMA further when it is considering the effectiveness, reasonableness and proportionality of a specific package of remedies, and during consumer testing to assess effectiveness.
5. Dignity considers that the price control remedies proposed in the Working Paper would not be effective, reasonable and proportionate, and would be considerably more onerous than necessary to address the potential AEC(s) that the CMA may identify in the crematoria sector – see paragraphs 8 to 22 of this paper.
6. Dignity notes that at the time of this submission it has not been given access to the CMA's underlying data that forms the basis of a number of findings and working papers that have prompted these remedy proposals. Dignity may therefore need to comment further, once it has been given such access, on whether the data and findings genuinely support the need for the remedy proposals being contemplated by the CMA.
7. At the outset, as explained in detail in Dignity's response to the working paper on "crematoria profitability analysis", the CMA's conclusions on excess profitability rely on a

number of assumptions with which Dignity does not agree. When adjusting for those assumptions, the CMA's data does not in fact suggest that a substantial part of the market is achieving excessive profitability.<sup>1</sup> In its working paper on evidence of competition between crematoria, the CMA concluded that “*very few customers compare crematoria, and for the few customers who do, the attractiveness of buildings and grounds and location/proximity are the factors most frequently compared on, whilst price and other aspects of quality (such as facilities available) are less important*”.<sup>2</sup> **Dignity therefore firmly believes that the most appropriate, effective and proportionate remedies to address the potential competition concerns that the CMA may have in the crematoria sector would be those that address demand-side issues, namely, information and transparency remedies.**<sup>3</sup> More comprehensive and transparent information on crematoria options, pricing, slot lengths and quality (delivered both through funeral directors and online) will encourage customers to exercise a more active and informed choice, driving competition between crematoria. Such measures would directly address any potential AEC the CMA identifies in the market.

### **Price control remedies are not appropriate, reasonable or proportionate for crematoria services**

8. The CMA's guidelines for market investigations recognise that the CMA “*will not generally use remedies that control outcomes (such as price controls) unless other, more effective, remedies are not feasible or appropriate*”. The guidance notes that a price control remedy does not address the cause of an AEC but instead seeks to restrict the consumer detriment arising from it. The guidance also notes specifically the specification risks that may arise where products or services are differentiated rather than homogeneous, given the complexity of capturing adequately the diversity of products on offer.<sup>4</sup>
9. Dignity submits that the CMA should therefore only pursue a price control remedy **in the last resort** where:
  - (i) it is **not possible to remedy, mitigate or prevent the identified AEC through other measures to increase effective competition in the market** – since this would be preferable to indirect measures to reduce consumer detriment arising from the AEC without tackling the underlying cause;
  - (ii) the proposed price control would be **effective and practical**; and
  - (iii) it is **not disproportionate** as less onerous remedies are not available.

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<sup>1</sup> Dignity's response of 12 June 2020 to the CMA's working paper on crematoria profitability, paragraphs 2.1 to 3.4.

<sup>2</sup> 'Crematoria: evidence on competition between crematoria', paragraph 3.

<sup>3</sup> On which, see Dignity's response of 27 February 2020 to the CMA's working papers on information and transparency remedies and quality regulation remedies published on 30 January 2020.

<sup>4</sup> Paragraphs 86, 88(a)(ii) and 89 of Annex B to CC3: Guidelines for market investigations: Their role, procedures, assessment and remedies, April 2013.

10. None of these criteria are met in the crematoria services market.
11. Price regulation primarily addresses the supply-side, and would therefore not be effective or proportionate as a long-term solution to demand-side issues identified by the CMA (see paragraph 7 above). A price control remedy is therefore not necessary or appropriate to address an AEC in crematoria services. Given that other, less onerous and more effective remedies are available, a price control remedy would also be disproportionate.
12. Arranging and attending a cremation is typically a highly sensitive and emotional experience for customers. Their experiences can therefore be significantly affected by the quality of the service that they receive and the standard of the facilities they attend. Dignity is concerned that **price regulation of crematoria could ultimately be to the detriment of customers**. There is a real risk that it could lead to a price cap becoming a focal point for all providers' prices, as well as to a degradation of quality, stifling innovation and reducing providers' incentives to invest in the quality of their service and grounds to meet changing customer needs.
13. There would also be considerable practical challenges in setting the level of any price cap in a manner that would not result in reduced competition, in particular by deterring further market entry or expansion. This is a particular concern in a sector in which market entry is already costly, as the CMA has itself recognised,<sup>5</sup> and where the planning regime poses a significant barrier to entry for private operators. See further paragraph 56. Dignity also encourages the CMA to consider how price regulation could have an adverse effect on the innovation and speed with which crematoria operators can respond to climate change. There is a significant risk that a price cap would reduce operators' incentives to respond to customer preferences for cremations with a lower environmental impact, such as through the installation of technology to control NOx emissions.<sup>6</sup>

**However, should the CMA ultimately conclude that price regulation would be a necessary and proportionate remedy in the crematoria sector, Dignity has set out in this submission its views on how such a price control should be designed to seek to limit the risks of unintended negative consequences on competition (although Dignity considers that the risks would remain significant with any form of price control in this sector).**

14. As the CMA recognises in the Working Paper, the basic elements of a cremation (in essence, the 'back of house' elements of the cremation service) comprise a relatively homogeneous product,<sup>7</sup> unlike the provision of funeral director services, which are highly differentiated.<sup>8</sup> **The scope of any price control should therefore be limited to these**

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<sup>5</sup> Working Paper, paragraph 42.

<sup>6</sup> NOx refers to nitrogen oxides (nitrogen monoxide and nitrogen dioxide), which are released during cremation. Many crematoria in the UK do not have technology at their sites to reduce the release of NOx gases, as there is currently no legislative requirement to do so.

<sup>7</sup> Working Paper, paragraph 49: "*Cremation services are a relatively homogenous 'product'*".

<sup>8</sup> Funeral director services are highly differentiated, as the products and services purchased reflect the wishes of the deceased and the bereaved – meaning that any price control remedy in funeral director services is highly likely to suffer

**essential ‘back of house’ elements of the cremation only** (together with associated mandatory charges) since the ‘front of house’ elements of cremation services (such as use of chapel, facilities and grounds) are highly differentiated. Recent experience during the Covid-19 crisis has highlighted that a number of customers are indeed organising a memorial event at a later point in time, separate from the cremation. This indicates that these two aspects of service could be separated from a customer perspective, although this could have severe adverse impact on the quality of “front of house” chapel services, memorial grounds etc, if it is commercially difficult to sustain those at reduced volumes and particularly under a strict price control.

15. Crematoria are regulated by local environmental health officers and are subject to an annually renewable permit to operate scheme.<sup>9</sup> There are therefore minimum standards that apply to the provision of the cremation itself, and Dignity considers that there is no need for quality regulation in that regard. However, there is a risk that if the boundaries of a price control on crematoria services are drawn too widely to include ‘front of house’ elements, it would result in a “race to the bottom” on quality of discretionary ‘front of house’ services; for example, leading to reduced competition on quality and under-investment in the upkeep of chapels, facilities and grounds.
16. In order to avoid quality degradation on the aspects that are not covered by the permit to operate, Dignity submits that any price regulation should cover only the essential elements of the cremation service, namely back of house services and associated mandatory charges (medical fees, environmental surcharges and a suitable ashes container). This would encourage suppliers to compete on both price and quality for non-essential front of house services with alternative venues (including other crematoria as well as other venue options), and to invest in the upkeep and refurbishment of their facilities. See further paragraphs 24 to 30.
17. In addition, implementing a price control on a limited set of services **opens up other elements of the service, which are not directly linked to the cremation itself, to be provided by third parties.**
18. The CMA has noted that it is mindful of “*the requirements of some customers for customisation and would aim to ensure that crematoria operators retain the incentives to innovate, differentiate, and offer a full range of products and services to customers*”.<sup>10</sup> Dignity welcomes this objective, and considers that it can only be achieved if price regulation is limited to essential ‘back of house’ services only (plus associated mandatory charges). Otherwise, as explained above, there is a significant risk of reducing competition in the market in terms of both price and quality (including slot length and qualitative service offerings such as the chapel, audio-visual facilities and grounds).

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from specification risks. See Dignity’s response to the CMA working papers of 20 February 2020 in respect of remedies in relation to funeral director services,[paragraphs 2.9 to 2.13.

<sup>9</sup> See Dignity’s response of 27 February 2020 to the CMA’s working papers on information and transparency remedies and quality regulation remedies published on 30 January 2020, paragraph 3.9.

<sup>10</sup> Working Paper, paragraph 59.

19. **Dignity also considers that it is essential that any price regulation applies to all providers**, including local authority crematoria and providers of “alternative” cremation services, such as direct cremation providers and “service-only” providers, who rely on third parties for the cremation itself, to avoid a distortion of competition if substitutable services are not all subject to the same regulation. Where an “alternative” provider does not provide regulated crematorium services itself, it should be required to pass through the cost of the crematorium service to the consumer at cost, making this transparent to the consumer and providing a separate price for the additional services they provide. See further paragraphs 20 and 22.
20. The CMA has noted that it expects that the introduction of a maximum price for “standard” cremation services would put downward pricing pressure on “*non-standard services and direct cremations*”.<sup>11</sup> Dignity does not agree with that expectation. The degree of any such pricing pressure would depend on the design of the benchmark package and how close it is to the “non-standard services and direct cremations”. It will accordingly be necessary for all non-standard service providers and direct cremation providers to be part of any price regulation remedy.
21. If the price regulation is restricted to ‘back of house’ services only, then the non-standard service provider or direct cremation provider (with or without its own crematoria) will be required to pass on the ‘back of house’ service to consumers at cost. If the price regulation extends to cover ‘front of house’ services, then the price regulation should equally apply to all providers of ‘front of house’ services to avoid a distortion of competition in ‘front of house’ services.
22. Finally, **Dignity disagrees with the CMA that price regulation in the crematoria sector would require parallel price regulation of funeral director services**.<sup>12</sup> As set out in detail in Dignity’s response to the CMA’s working paper on remedy options for regulating the price of funeral directors, price regulation in funeral director services would be wholly disproportionate, impractical and ineffective in addressing the potential AEC in that market.<sup>13</sup> Of the two proposals set out by the CMA in paragraph 80 of the Working Paper for managing interactions between the crematoria sector and the funeral director sector, Dignity considers that the second would result in a better outcome for consumers, i.e. requiring the cost of the cremation package to be passed through to consumers at the price charged by the crematorium, including any price reductions negotiated by funeral directors.<sup>14</sup> It is Dignity’s experience that there is little negotiation between funeral directors and crematoria operators for attended services; for example, Dignity only gives volume discounts on direct cremation charges. However, it does not follow that requiring funeral directors to pass on the cremation price at the price charged by the crematorium would require a parallel price control on funeral directors.

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<sup>11</sup> Working Paper, paragraph 52.

<sup>12</sup> Working Paper, paragraph 82.

<sup>13</sup> See Dignity’s response of [12 June 2020] to the CMA working papers of 20 February 2020 in respect of funeral director services, Section 2.

<sup>14</sup> Working Paper, paragraph 80(b).

23. The remainder of this response sets out Dignity's detailed comments on the consultation questions contained in paragraphs 111 to 113 of the Working Paper.

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**(a) Are there any products or services which are not currently included in the suggested benchmark package which should be included? What is the evidence to support this view?**

**(b) Are there any products or services which have been included in the suggested benchmark package which should not be included? What is the evidence to support this view?**

24. As set out above at paragraphs 7 to 13, Dignity's view is that price regulation would not be effective or proportionate as a remedy. However, if the CMA were minded to consider this option further, it would be essential that any benchmark package was limited to essential 'back of house' services only (plus associated mandatory charges), maintaining scope for providers (including third party providers that do not offer cremations themselves) to compete on price and quality for other aspects. Dignity notes that the information and transparency remedies proposed by the CMA could increase the dynamism of this competition.
25. Any benchmark package would therefore need to include all back of house services and the essential charges that accompany those services, being medical fees, environmental surcharges and an ashes container.<sup>15</sup> As explained in paragraph 15, there are already minimum standards in back of house services that are monitored via the permit to operate, which may help to mitigate the risk that price regulation would lead to a "race to the bottom" in terms of standards for these essential services.
26. Dignity notes that medical fees and environmental surcharges are mandatory where they apply. The CMA has proposed that, if these charges are excluded, it would impose a requirement on crematoria operators to pass them on at cost. While Dignity agrees that these charges should be passed on to customers at cost, it is seriously concerned about the likelihood of misreporting.<sup>16</sup> Not being clear and upfront about these charges would distort customers' ability to compare different crematoria by accessing and assessing the overall cost of the cremation. Dignity suggests that there should be a requirement for providers to present their prices both including and excluding these charges, to ensure that they are passed to consumers at cost.
27. Dignity considers that the use of a chapel and the provision of music should be excluded from any benchmark package. These elements are not homogeneous, and there is therefore a real risk that including them in any price regulation would lead to significant

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<sup>15</sup> Dignity agrees with the CMA's proposal at paragraph 57 of the Working Paper to exclude any charge for scattering ashes.

<sup>16</sup> This is an existing problem, for example, with the price data that is reported by the Cremation Society, in which there are numerous examples of cremation fees being reported with omitted essential charges. See Annex 1 to Dignity's response of 27 February 2020 to the CMA's working papers on cremation services of 30 January 2020.

consumer detriment in the form of a significant degradation in quality and choice for customers:

- (i) The standard and quality of chapels varies widely between crematoria, in terms of capacity, slot length, seating (e.g. pews or soft chairs), décor and upkeep. Customer survey evidence clearly shows that slot length, in particular, is extremely important to customers and can significantly improve the quality of their experience.<sup>17</sup> Moreover, the content of a chapel service is typically a “co-production” between the crematoria operator, the funeral director (if there is one) and the bereaved family, and therefore highly differentiated from service to service.
- (ii) There is also a wide variety across crematoria operators in the provision of audio-visual services: for example, some crematoria have integrated digital music systems, whereas others have analogue music systems with limited capabilities.

28. Moreover, there are a number of suppliers offering cremation services in competition with “traditional” operators, where the cremation itself (i.e. the back of house service) is uncoupled from the chapel service:

- (i) In particular, direct cremation has grown rapidly in recent years and, while its overall share of the total market is currently moderate (Dignity’s direct cremation offering comprised [X] % of its total cremation volumes in 2019, up from [X] % in 2018), it continues to grow at a significant rate. Since March 2020, when the Covid-19 related restrictions came into effect, direct cremations have accounted for [X] % of Dignity’s overall cremation volumes, an increase of [X] % from the 2019 figure. Direct cremations have challenged the traditional model of holding a cremation and a funeral service at the same time and have opened up a different choice for customers. Direct cremation providers are not limited by location and exert a nationwide competitive constraint on “traditional” operators. Some direct cremation providers have their own cremation facilities; others do not and contract with third party crematoria to provide the ‘back of house’ cremation. Dignity notes that in some cases there is not a clear cut distinction between (attended and unattended) direct cremation and those that offer “standard” cremations; for example, Dignity offers both unattended and attended direct cremations through its Simplicity business, as well as “standard” cremations through the Crematorium and Memorial Group.
- (ii) Funeral directors are also increasingly offering attended services at their funeral homes or in standalone chapels, coupled with a direct cremation. For example, Fosters Funeral Service in Glasgow offers a direct cremation with a separate

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<sup>17</sup> See Trajectory report, “*Cost, Quality, Seclusion and Time*”. More than one in three (36%) respondents described their service experience as feeling as if they were on a “conveyor belt”; almost three in 10 customers (29%) said that they did not have enough time at the crematorium. This means that a third of cremation service customers are unhappy with their experience as a result of not having a sufficiently long time slot. 78% of customers and 90% of funeral directors say there should be enough time to ensure that attendees do not see other mourners.

service in its funeral parlours,<sup>18</sup> and Dignity is currently trialling a similar service in Swansea and Glasgow offering a 60 minute personalised service in a specialist venue, followed by a direct cremation at a Dignity crematorium.<sup>19</sup>

- (iii) GreenAcres Group offers “service-only” cremation services,<sup>20</sup> holding services at its six memorial parks throughout the UK (such as Kemnal Park and Rainford) followed by a direct cremation at a third party crematorium.
29. In order to avoid a distortion of competition in terms of the interaction between these alternative models and ‘traditional’ cremation services, any remedies must apply equally to all choices that are available to customers for purchasing a cremation. In order for a crematoria price control to be capable of applying equally to all providers, any benchmark package must therefore de-couple the back of house services from the use of the chapel, so as to allow it to extend to suppliers that offer only one of those two elements (i.e. direct cremation providers with their own crematorium on the one hand, and “service-only” providers that pay a third party for direct cremation on the other). Dignity suggests that “service-only” providers are required to pass on the costs of the essential benchmark package (i.e. the cremation) to customers at cost.
30. Further, if use of a chapel is excluded from the benchmark package, the package would be far more easily measurable and comparable across operators, which would facilitate enforcement.

**(c) What is your view on time-based restrictions relating to the benchmark package, for example the length of the chapel slot?**

31. As explained above, Dignity’s view is that it would not be proportionate or practical for use of a chapel to be included in the benchmark package – and that including it could ultimately lead to a reduction in competition.
32. However, if the CMA were minded to consider this option further, it would either need to prescribe a minimum chapel slot length, or set the level of the price cap on a price per minute basis. If it does not, it will create a perverse incentive for operators to decrease their slot lengths, which would significantly decrease the quality of the service for customers.<sup>21</sup> Based on customer survey evidence, Dignity submits that the minimum slot length should be at least 45 minutes, although 60 minutes would be optimal.<sup>22</sup>

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<sup>18</sup> “Gathering Cremation with Service at Parlour”. See <https://www.fostersfuneraldirectors.com/packages/contemporary-funeral/>.

<sup>19</sup> See for example “Chapel Service”, at [https://www.dignityfunerals.co.uk/funeral-directors/locations/wales/west-glamorgan/swansea/ty---hedd-funeral-home?gclid=EAlaIQobChMlx7jkz-qN6AIVjRnTCh3SLg0MEAAAYASAAEgLc\\_vD\\_BwE&gclidsrc=aw.ds](https://www.dignityfunerals.co.uk/funeral-directors/locations/wales/west-glamorgan/swansea/ty---hedd-funeral-home?gclid=EAlaIQobChMlx7jkz-qN6AIVjRnTCh3SLg0MEAAAYASAAEgLc_vD_BwE&gclidsrc=aw.ds).

<sup>20</sup> See <https://www.greenacresgroup.co.uk/>.

<sup>21</sup> Dignity has provided the CMA with customer survey evidence that clearly shows that time and privacy, and therefore slot length, have a significant effect on the quality of customers’ experiences: see footnote 17.

<sup>22</sup> See Trajectory report, “*Cost, Quality, Seclusion and Time*”.



33. If there is no standardised slot length to which the benchmark package applies, Dignity strongly suggests that the CMA requires crematoria operators to state clearly the duration of the service being purchased alongside the fee, together with the price per minute.<sup>23</sup> If a price per minute metric is not included, customers will not be able to assess effectively the options available to them and the true value of the service being offered. This, in turn, would discourage providers from offering longer slot lengths as a high quality alternative to the benchmark package.

**(d) Do you consider that using pricing information from the sector is a sensible approach for designing a price cap for crematoria? Do you think a rate of return approach would be more appropriate in this sector?**

34. If the CMA decides to pursue a price control remedy, Dignity considers that a maximum price cap would be a more appropriate approach in the crematoria sector than regulation on rate of return, particularly in terms of enforceability.<sup>24</sup> A maximum price cap could, if initially set by the CMA, be enforced by any regulator (such as the CQC), while a rate of return cap would likely require a more sophisticated, dedicated regulator to monitor costs as well as revenue (the setting up and funding of which would result in a disproportionate cost burden on the industry) and would not be workable or appropriate (see paragraph 37 below).
35. In terms of collecting data from the sector, Dignity notes that it has raised concerns about the accuracy and comparability of the pricing information the CMA has used as the basis for its analysis of crematoria prices (the Cremation Society data), and has submitted evidence that many local authorities appear to under-report their fees to the Cremation Society.<sup>25</sup> If the data is known to be incorrect, the CMA should validate it with each crematorium individually.
36. Dignity also notes that the CMA has not assessed the extent to which local authority crematoria generate additional revenues from charging additional fees, such as late arrival and overrun of time slot penalties, administration fees to process late cremation paperwork, and fees for storage of remains. The CMA has also not explored the extent to which “resident fees” offered by local authority crematoria affect competition (for example, by making it more difficult for private crematoria to attract out-of-area customers). Dignity considers that it is important that the CMA assesses the level of

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<sup>23</sup> Dignity has previously submitted to the CMA details of the interactive crematorium comparison tool that is featured on its website, which includes price per minute as one of the comparators. See Figure 1 of Dignity’s response of 27 February 2020 to the CMA’s working papers on information and transparency remedies and quality regulation remedies published on 30 January 2020.

<sup>24</sup> However, a maximum cap would need to be inclusive of all essential fees: see paragraphs 24 and 25. Dignity submits that it is not appropriate to include use of a chapel in any benchmark package that is subject to a cap; however, if use of a chapel is included, a maximum price cap must take into account the length of chapel slots and the price per minute for different slots (see paragraphs 31 to 33).

<sup>25</sup> See Dignity’s response of 27 February 2020 to the CMA’s working papers on cremation services of 30 January 2020, Annex 1 and Dignity’s submission on the CMA’s quantitative analysis of entry in the crematoria market of 12 June 2020 (paragraph 2.18).

complexity of pricing structures available in the market by collecting pricing information on these additional fees and validating all pricing information with each crematorium.

37. Dignity considers that a “rate of return” approach would not be workable or appropriate in the crematoria sector. The UK population of crematoria is highly diverse in terms of size, age, cycle of cremator replacement, and exposure to costs such as upkeep and investment in cemetery and memorial grounds. Local authority crematoria are typically less efficient and have a higher cost base than privately owned crematoria. Moreover, as set out in Dignity’s separate submission on the “crematoria profitability analysis” working paper,<sup>26</sup> Dignity has a number of concerns with the treatment of data in the CMA’s analyses of crematoria margins and profitability. Dignity would therefore be concerned about the reliability of a rate of return approach, in particular given the number of variables that affect crematoria profitability (such as the infrastructure and land investment, upkeep of adjacent cemeteries, and the financial impact of the planning regime on private operators).

**(e) Do you have any views on the design variants we have outlined (for example, whether the price level of any price regulated package should be set as one price across the UK, whether we should make allowances for certain higher cost areas such as London or whether any cost base should be done on a crematoria by crematoria basis or otherwise)?**

38. Dignity supports the CMA’s current thinking that any price regulation in the form of a maximum price would apply to all crematoria operators in the UK.<sup>27</sup>
39. However, to avoid a distorting effect on competition, the level of the maximum price should allow for differences or uplifts to take into account regional differences in areas with a higher cost base than others, including in terms of the value of land (land costs vary across the UK, as the CMA has acknowledged in its working paper on crematoria profitability).<sup>28</sup>

**(f) Do you have any suggestions as to the criteria we should use to set the benchmark for the initial level of the price cap?**

40. Dignity agrees with the CMA’s acknowledgement that some aspects of the crematoria sector may make it difficult to assess where the maximum price should be set. In addition to the specific factors that the CMA identifies in paragraph 34 of the Working Paper (the potential infrastructure and land investment required), another important factor is the additional costs incurred by private operators as a result of the barriers raised by the planning regime. The CMA should also consider, more broadly, potential effects on supplier incentives (whether the level of the cap minimises the scope for perverse incentives and encourages competition); and accuracy (whether the level of the cap will

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<sup>26</sup> See Section 4 of that submission.

<sup>27</sup> Working Paper, paragraph 110.

<sup>28</sup> For instance, land costs in Greater London are acknowledged to be particularly high compared to other areas of the country. See paragraph 74 of the working paper on crematoria profitability.

accurately reflect changes in competitive market conditions over time, and any changes in the costs that an efficient supplier would be expected to bear).

41. As explained above, Dignity strongly considers that including use of a chapel in any price cap would lead to a reduction in competition. However, if the CMA ultimately considers that use of a chapel should be included, Dignity submits that any price cap should be set by reference to the price per minute of the chapel time slot. This would allow operators to continue to compete on slot length (longer slot lengths having a significant positive impact on the quality of customers' experiences<sup>29</sup>), and to offer different slot lengths to accommodate customers with different needs. This would also allow consumers to assess and compare crematoria more easily.
42. Dignity considers that in setting any price cap the CMA should take into account not only the prices of traditional crematoria operators, but also those of "alternative" providers, namely direct cremation providers and "service-only" providers (see paragraphs 28 and 29).

**(g) Do you have any views on how the Burial and Cremation (Scotland) Act 2016 should interact with any price regulation implemented by the CMA, or a new regulator?**

43. In order to ensure consistency for all customers, Dignity considers that any price regulation should apply across the UK (although the level of the price control should take into account regional variations). To the extent that the devolved nature of legislation in this area makes that difficult, Dignity considers the CMA and UK Government would need to work with the local government agencies in Scotland and elsewhere to ensure that any parallel systems of regulation and enforcement in the UK are consistent.
44. Dignity notes that extending any price regulation to the whole of the UK may require an amendment to section 63 of the Burial and Cremation (Scotland) Act 2016 in respect of local authority crematoria in Scotland, or a regulation of the Scottish Ministers (under section 47(1)(a) of the Burial and Cremation (Scotland) Act 2016) to supplement section 63.

**(h) What is your assessment of whether the option of setting a maximum price for a benchmark package of products/services (paragraph 49) is capable of effective implementation, monitoring and enforcement?**

45. See paragraph 34. Dignity considers that a maximum price cap could be monitored and enforced by any regulator, such as the CQC, and day-to-day monitoring could be possible through the licensing regime that the CMA has proposed for funeral directors. The ultimate regulator must have the ability to require compliance with the regulation and impose sanctions (such as a suspension of services) for sustained non-compliance.

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<sup>29</sup> See footnote 17.

**(i) Do you think that compliance reporting requirements to the CMA or a regulator should be the same for all crematoria?**

46. Yes. Dignity would support a level playing field across the sector, irrespective of ownership (local authority or private) and location, and does not consider that reporting requirements in respect of a maximum price cap would create a disproportionate burden on any operator. Dignity also considers that alternative providers of cremation services, such as direct cremation providers and “service-only” providers (see paragraph 28), would need to be included in the scope of any price regulation in order to ensure that they pass through regulated cremation prices to consumers at cost, avoiding a distortion of competition.

**(j) Do you have any views or suggestions on designing and implementing an effective communication strategy to ensure that consumers, crematoria and relevant third parties understand their rights and responsibilities if price regulation is introduced? In addition, how could we ensure that a benchmark package is sufficiently promoted and visible to consumers (paragraph 105.b)?**

47. Existing trade bodies could form part of any communication strategy for crematoria. As regards customer-facing initiatives, Dignity considers the appropriate use of intermediaries along with Government-led awareness campaigns should suffice. If an independent comparison platform is set up for funeral director services, it could also be used to promote crematoria services.
48. If a benchmark package is introduced, Dignity considers that it should be a requirement for all cremation service providers to lead with this price on their pricing materials and on their websites, with the cost for optional extra services being itemised separately and in a transparent manner. Dignity agrees with the CMA that it must be clear to customers that they are free to customise the service that they purchase, and that if they choose to add extra services these will be charged for above the regulated price.<sup>30</sup> However, it should also be clear to customers that “non-standard” services (i.e. direct cremations and reduced fee time slots) are available.

**(k) What preparation would be required and how long do you think crematoria might require to prepare for the implementation of any price control regulation?**

49. Some crematoria operators have more complex pricing structures than others. Providers would be required to update all pricing materials and their websites, including by allocating separate prices to non-essential services that they currently provide as part of a package.<sup>31</sup>
50. If a price regulation remedy were to include use of the chapel and prescribe a minimum slot length (which Dignity considers to be essential if use of the chapel is included in a

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<sup>30</sup> Working Paper, paragraph 60.

<sup>31</sup> On the other hand, Dignity notes that local authority crematoria often have disaggregated pricing and may require some time to move to an aggregated benchmark package price.

benchmark package),<sup>32</sup> providers would also be required to amend their chapel times to the minimum slot length, if they did not already offer it, and design appropriate incremental prices if they also wished to offer longer slot lengths than the minimum. Appropriate adjustments may also need to be made to accommodate current lower priced early morning slots or direct cremation slots.

51. Dignity estimates that providers would require approximately three months to implement a changed pricing structure and slot combination. This could be significantly longer for local authority crematoria and funeral director owned crematoria.

**(l) What would be the likely costs of implementation, monitoring and enforcement for crematoria?**

52. Dignity is unable to comment on the costs of implementation, monitoring and enforcement in the abstract without a more detailed view of what the remedy proposal would entail.

**(m) Do you consider an initial duration of 5 to 7 years is an appropriate period for the implementation of a price control remedy and achievement of its aims (paragraph 108)?**

53. The crematoria sector in the UK is in a period of organic transformation with changes in consumer behaviour, preferences and increasing levels of consumer awareness (which some of the CMA remedy options in terms of information and transparency could help accelerate). Dignity notes that there may be further changes in the crematoria sector in the future, namely a rise in new technologies such as cryomation<sup>33</sup> and resomation,<sup>34</sup> and potentially legislation or other action to control NOx emissions. Dignity therefore considers that it would be prudent for the CMA to implement any price control remedy for only an initial short, fixed period of time (after trial runs), or at least build in a regular review period to confirm whether any price control remains necessary and proportionate.
54. Given the onerous nature of a price control remedy, it may also be appropriate for the CMA to consider implementing its proposed remedies in tranches if it decides to include a price control remedy. All remedies could be included in the same order, but they could be brought into effect on different dates through the adoption of separate commencement orders. The CMA could bring into force its proposed information and transparency remedies first and, if these were effective in stimulating competition in crematoria services (Dignity expects they would be), there may be no reason to bring into effect an onerous price control. The CMA could define in advance what change in the market would obviate the need for price regulation (for instance increase in number of customers comparing

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<sup>32</sup> However, Dignity strongly considers that it is not appropriate (and could be harmful) to include use of a chapel in the benchmark package at all – see paragraphs 27 to 30.

<sup>33</sup> Cryomation is a process to dispose of a body by immersion in liquid nitrogen. As the process is powered by electricity, it results in a significant reduction in carbon dioxide emissions compared to cremation. See, for example, <http://cryomation.co.uk/cryomation/>.

<sup>34</sup> Resomation, also known as alkaline hydrolysis or water cremation, is a process to dispose of a body by immersion in a solution of potash lye and water. Like cryomation, it results in significantly less carbon dioxide emissions than cremation. See, for example <https://www.funeralguide.co.uk/help-resources/arranging-a-funeral/funeral-guides/a-guide-to-water-cremation> and <https://beyond.life/blog/everything-need-know-resomation/>.

crematoria fees or a decrease in overall average prices for cremation services). Dignity firmly believes that the most effective remedies to address the potential AEC in crematoria services will be those that address demand-side issues in the long-term, namely, information and transparency remedies.

**(n) Do you consider there to be other risks or options for mitigation which we have not considered (paragraphs 83-86)?**

55. The CMA notes that it is “*mindful of the impact of any price control remedy on potential future market entry*”.<sup>35</sup> Dignity agrees that stifling future market entry is a potential unintended consequence of price regulation. The CMA acknowledges in the Working Paper that “*market entry tends to be costly (there are high initial sunk costs required to enter)*”,<sup>36</sup> and these costs can be increased for private operators if required to undergo a planning appeals process. These increased costs for private operators would need to be taken into account when determining the level of any price cap. In practice, it is often only possible for private operators to obtain planning permission on appeal due to the conflicts of interest that arise where local authorities own crematoria that would be adversely affected by a proposed new private crematorium, as well as controlling the planning regime. Accordingly, Dignity considers that the CMA should also consider reform of the planning regime.

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<sup>35</sup> Working Paper, paragraph 42.

<sup>36</sup> Ibid.