

Funeral directors and crematoria services market investigation

Dignity plc response to CMA working papers on remedy options for funeral director services, dated 20 February 2020

1. Introduction

- 1.1 Dignity plc (“**Dignity**”) welcomes the opportunity to comment on the working papers published by the CMA. This submission responds to the CMA’s working papers on potential: (a) remedy options for regulating the price of funeral director services at point of need (“**FD Price Regulation WP**”); and (b) local authority tendering remedies (“**LA Tendering WP**”).
- 1.2 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.
- 1.3 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 FD Price Regulation WP and the LA Tendering WP as individual remedy options. Dignity reserves its position on whether the full package of remedies being considered by the CMA (including the information and transparency, quality regulation and crematoria price regulation remedy options) is effective, reasonable and proportionate.
- 1.4 Dignity looks forward to engaging with the CMA further when the reasonableness and proportionality of a specific package of remedies is being considered and during consumer testing to assess effectiveness.
- 1.5 Dignity considers that the remedies proposed in the FD Price Regulation WP and the LA Tendering WP would not be effective. Further, the proposed price regulation remedy for funeral services would be unreasonable and disproportionate, being considerably more onerous than necessary to address the potential AEC(s) that the CMA may identify in this sector. Dignity has set out its reasons for this below.
- 1.6 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. Once it has been given such access, Dignity may therefore need to comment further, on whether the data and findings genuinely support the need for the CMA’s contemplated remedy proposals.

2. Concerns regarding the price control remedies proposed by the CMA

2.1 The CMA's 'CC3: *Guidelines for market investigations: Their role, procedures, assessment and remedies*' ("**CMA Guidelines**") 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*".¹ The guidance notes that a price control remedy does not address the cause of an AEC but instead seeks to limit the consumer detriment arising from it.² The guidance also notes 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.³

2.2 Dignity submits that the CMA should therefore pursue a price control remedy only **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 that do not tackle 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.

2.3 None of these criteria are met in the funeral director services market.

There are other routes available to the CMA to increase effective competition in funeral director services

2.4 The CMA is concerned that weak demand-side constraints in the market for 'at need' funeral director services in the UK has meant that prices have historically been higher than a competitive level. The CMA is accordingly considering a number of demand-side information and transparency remedies to stimulate customer behaviour, encouraging customers to make an active and informed choice between funeral directors, which could be expected to improve the level of price and quality competition between funeral services providers.

2.5 Dignity believes that the most appropriate, effective and proportionate remedies to address directly the potential AECs that the CMA identifies in this sector would be those that address demand-side issues, namely, information and transparency remedies.⁴

2.6 Further, a remedy as extreme as price control should only be considered by the CMA where the exercise of market power by the incumbents renders all other remedies

¹ Paragraph 89 of Annex B to CC3: Remedial action, Guidelines for market investigations: Their role, procedures, assessment and remedies, April 2013.

² Paragraph 86 of Annex B to CC3.

³ Paragraph 88(a)(ii) of Annex B to CC3.

⁴ 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.

ineffective. This is not the case for funeral services. This is a highly fragmented market with a significant number of competitors, varying price levels across providers and high price dispersion across the UK. Furthermore, profit margins have declined in the last two years (at least for Dignity) and funeral director fees have decreased in real terms (after inflation). See in this regard Dignity's response to the Funeral Director CMA working papers dated 20 February and 21 February 2020.

2.7 The funeral director services sector has been undergoing a transition period:

- (a) Growth of simple funerals and direct cremation: taking Dignity by way of example, in 2019 its funeral volumes comprised [X]% simple funerals and [X]% direct cremations,⁵ as compared to 2017 when the volumes were [X]% and [X]% respectively. Research conducted by Trajectory in 2019⁶ found that [X] of respondents were aware of direct cremation as an option and [X]% thought this was a possibility where they lived. In this context, [X]% of respondents who were aware of direct cremations and considered it as an option in their area said that they felt it was as respectful an option as traditional funerals. Therefore, while the CMA may consider that these funeral options at present do not represent a significant portion of the total market, the above clearly indicates that there is growing awareness and acceptance of these options, and their volume may well increase significantly in the future.
- (b) Increasing use of online sources to search and compare funeral providers: there was a marked increase in the number of customers starting their search journey for funeral services online. For instance, in 2019 [X]% of Dignity's customers found Dignity online (compared to [X]% in 2018).

2.8 These trends have now been further accelerated by the Covid-19 crisis:

- (a) [X].

Figure 1: [X]

[X]

Note: [X].

Dignity expects customer familiarity with alternative funeral options to have increased during this period. For example, families that have arranged or attended funerals (in person or remotely by video link) during the pandemic period are likely to have experienced (possibly for the first time for many) the concept of restricted funerals or funerals where the cremation and memorial service

⁵ The calculations exclude funerals performed under contract with an institution (most often hospitals, universities or coroners), child funerals and pre-need plans.

⁶ Trajectory, *Low cost and alternative funeral solutions*, page 27; submitted as Annex 1 to the CMA along with Dignity's response dated 27 February 2020 to 'Qualitative information from independent funeral directors WP'

happens at two separate dates and locations. These consumers will likely draw on these experiences when arranging funerals in the future.

- (b) Use of online sources: During the pandemic, Dignity saw the number of customers finding Dignity services online further increase. Dignity has experienced that online sessions on its website almost doubled in the period January – May 2020 compared to 2019: more than [§] visits in January – May 2020 vs. around [§] in the same period of 2019. Dignity expects a number of customers to continue to search and compare funeral providers online, even post the pandemic experience.

With an increase in consumer awareness, there is also increasing price competition between providers. The CMA itself has acknowledged this change.⁷ Dignity believes that measures to improve transparency and comparability of funeral director offerings further are likely to accelerate this already changing behaviour and create a long-term shift in the way UK customers perceive and purchase funeral services, removing the need for any interventionist price controls.

Price control will not be effective or practical

- 2.9 As the CMA notes (at paragraph 30(b) of the FD Price Regulation WP), funeral director services are differentiated with the products and services purchased reflecting to some degree the wishes of the deceased and the bereaved. Furthermore, and as the CMA recognises, the vast majority of consumers are happy with their funeral choices. The introduction of a benchmark package could influence consumers to choose this package over a bespoke product which better suits their needs. This could reduce consumer satisfaction and also stunt the development of alternatives, such as low cost funeral options.
- 2.10 The price control remedy is therefore likely to suffer from specification risks and other unintended consequences, such as reducing competition between funeral directors on price (if the price cap becomes a focal point for pricing in a relatively fragmented market), and on quality (through an inability to charge prices over the price cap for high quality services), as well as distorting consumer choices. In Dignity's experience, it is important for customers to be able to personalise funeral services, coffins, options for ashes and ways in which to remember the deceased. Funeral directors therefore need to be able to adapt and meet the diverse requirements of their customers. It is difficult to see how potential price regulation will take this into account and build flexibility into the system so that funeral directors are able to deliver tailored services. For instance, funeral directors need to be able to provide choices to customers regarding type of vehicle, alternative

⁷ Dignity refers to paragraph 52 of the *Competition between funeral directors* WP, where the CMA notes, "[t]he above evidence shows examples of the largest funeral directors taking rivals' prices/actions into account when setting their own prices (as well as other responses, such as increased marketing or pricing trials). On the other hand, there were also some examples of them not being responsive to rivals' pricing and/or local competitive conditions in their pricing decisions. Their approach to pricing has, however, become somewhat more responsive to competitors' activities in more recent years."

service venues, bespoke cortege routes, range of coffins, etc. These often require investments in infrastructure and add to the cost base, but equally are not elements that need to be forced into a “package” for customers that don’t need them.

- 2.11 Price regulation may also reduce innovation in the sector. A focus on competition for low prices may limit operators from being able to offer higher quality products that may be priced higher but still represent value for money to consumers. Dignity expects the funeral industry will also be required to play its part in adopting sustainable business practices through greater use of electric vehicles and coffins made from sustainable materials; a price cap would make it challenging to embrace such changes proactively due to the increased costs involved at present.
- 2.12 There will be considerable challenges in setting the price cap at a level that will not result in reduced competition: if it is set too low, higher quality operators may not be able to offer services at a commercial return and customers may be denied options that they may want (and would have been willing to spend for); if set too high, lower cost operators may increase their prices to the cap, increasing their profits and prejudicing consumers. For a heterogeneous product, this risk is particularly acute.
- 2.13 There will also be extensive practical challenges in carrying out the proposed benchmark price survey, in particular in terms of ensuring that the prices collected and used include all the services in the benchmark package. For example, Dignity understands that not all funeral directors currently provide a 24 hour / 7 day a week (“24*7”) collection and transportation service. Their prices will therefore not include the fixed costs associated with the provision of such a service and will need to be excluded from the survey or adjusted upwards.
- 2.14 **The CMA has itself noted the wide dispersion in funeral prices at present, which causes further concerns about the viability of a price control.** Any control would need to account fairly for the underlying causes of variation, with an appropriate forum and appeal mechanism for any operators that consider that the control does not allow them to compete fairly. The CMA has found a wide dispersion in average total revenues (including disbursements) across the UK. This dispersion exists for funerals conducted by the same operator (as different customers demand different types of services), and for the same operator over different periods of time (depending on customer choices during a given period but also change in underlying costs over time). For smaller independents, the volatility in income is likely to be much higher as they conduct only a limited number of funerals and they are vulnerable to the cycles in death rate in their region – for such operators, the constraints of a price control could prevent efficient recovery of costs. Different funeral operators also adopt different business models and often attract different customer types. A price control or a benchmark package risks flattening out this variation which could have unintended consequences impacting innovation and quality of service.
- 2.15 Dignity notes that the CMA included disbursements in its analysis of price dispersion because it could not be certain that the same heads of expenses were being consistently excluded for all operators. This will continue to be a challenge in the design of any price control as different funeral providers may have a different approach to certain heads of expense. For instance, Dignity uses ‘casual’ pall bearers. They appear in the branch costs. But they could be charged as a disbursement by other operators. For instance,

Dignity is aware that many independent funeral directors use 'carriage masters' for vehicles that come with bearers so this will likely appear as a chargeable item in addition to professional services.

- 2.16 Dignity notes that the CMA itself experienced the challenges of gaining reliable data on the over 3,500 small independents operating in the market. Even using its formal powers, only 32 provided data in a form that the CMA could use in its analysis (under 1% of independents in the market), and even these had data issues. The CMA acknowledges that most smaller operators were not able to provide reliable balance sheet information, had errors in their responses, and often had unexpectedly low salary costs in their accounts (potentially reflecting the owners not taking full salary).⁸ If financial information is unreliable or inaccessible, the design and implementation risks on a robust price control increase substantially.

Price control is disproportionate

- 2.17 Taking into account the alternative remedy options being considered by the CMA, any proposed price control measures at this stage for funeral director services would be disproportionate as other, less onerous, more effective remedies are available.
- 2.18 The introduction of any form of price regulation is likely to bring about severe unintended consequences. It may severely prejudice market participants that invest in quality and innovation and reducing their incentives to invest in the future. It may also deter funeral directors from entering the market or risk increasing market exits. This will result in consumer harm in the long term if there is a reduced range of services on offer in the future and less innovation in the development of services.⁹
- 2.19 Dignity notes that even if the results of the CMA's profitability findings were to be accepted as accurate (which Dignity does not accept), the CMA has found excess economic returns in under 40% of the market (by volume). This does not establish that the majority of the market has prices unrelated to costs and any inference on the performance of independents is based on a sample that the CMA says is 'no longer considered representative'.¹⁰ In the circumstances, introducing a price control would be draconian and not based on a sound analysis of the true market position, underlying costs and how they interact with pricing levels across the market.
- 2.20 The risk of unintended consequences should be taken seriously by the CMA, particularly given that the Covid-19 crisis has demonstrated the essential role played by funeral directors and the challenges they have faced in adapting their businesses to increased funeral volumes and enhanced infection control procedures. For example, this has involved increased purchasing of personal protection equipment (PPE) for staff at

⁸ The CMA's working paper on 'Funeral Directors: Profitability Analysis', published on 20 February 2020.

⁹ As the CMA noted in its final report in the Energy Market Investigation (2016), "... attempting to control outcomes for the substantial majority of customers would – even during a transitional period – undermine the competitive process, potentially resulting in worse outcomes for customers in the long run. This risk might occur through a combination of reducing the incentives of customers to engage, reducing the incentives of suppliers to compete, and an increase in regulatory risk. (p. 656)".

¹⁰ The CMA's working paper on 'Funeral Directors: Profitability Analysis', published on 20 February 2020, paragraph 22.

significantly inflated prices, increasing mortuary capacity and adapting services to enable social distancing, such as through limitations on funeral attendee numbers due to Government restrictions, installing screens in limousines and additional cleaning services. It is not yet clear whether some of these adaptations will become permanent.

- 2.21 Recent events have also highlighted the importance of maintaining spare capacity in funeral operations and having the ability to adapt to stringent personal protection procedures, health and safety standards at short notice. This requires funeral directors to have sufficient liquidity and financial flexibility. At the same time, there is also a need to ensure through appropriate quality regulation that funeral directors do invest in facilities and are equipped to deal with surges in local death rates. In areas where funeral directors do not have such capacity, local hospitals and coroner facilities face increased storage pressure and during the Covid-19 crisis, this led in some cases to investment in significantly more expensive temporary resting facilities which could have been avoided with better planning.
- 2.22 If a tightly designed price control were to be in place at present, it could possibly have had perverse effects, constraining the ability of funeral providers to adapt quickly. It is therefore clear that it would be disproportionate for the CMA to introduce price regulation when there are other less onerous remedies available; particularly when there is a significant risk that price regulation could create incentives for funeral directors to cut corners on (or preclude their ability to appropriately invest in) quality and infection control measures. The CMA needs to ensure that any remedies implemented do not reduce the resilience of the funeral sector to possible future shocks of a similar kind. See below in this regard a graph which demonstrates that the spike in number of deaths caused by the Covid-19 crisis may not actually be a one of a kind event in the UK context.

Figure 2: Weekly deaths, England and Wales, 1993 - 2020

Source: <https://www.nuffieldtrust.org.uk/resource/i-chart-of-the-week-i-peak-in-weekly-deaths-during-pandemic-is-among-highest-on-record-even-with-lockdown-measures>
(Nuffield Trust analysis of ONS data).

Proposal to introduce a price-capped benchmark funeral package

- 2.23 The CMA Guidelines¹¹ recognise that defining appropriate parameters for the level of a price cap may be impractical, particularly where:
- (i) Products or services are differentiated rather than homogeneous, which increases the complexity of any control in order to capture adequately the diversity of products on offer;
 - (ii) Pricing in the relevant market is volatile, for example because of variability in input costs.
- 2.24 Dignity notes that the market for funeral director services features both these concerns: the services provided to consumers are highly differentiated and different operators have different cost bases. The fact that no other country (despite many having looked at this sector) has implemented any form of price control¹² suggests that this complex exercise

¹¹ Paragraph 88(a) of Annex B to CC3.

¹² CMA's working paper on *International Comparisons*, paragraph 8, published on 30 January 2020.

can only be expected to have limited benefit at significant costs and with potentially severe adverse consequences distorting competition in the market in the long term.

2.25 **The proposal underestimates the complex elements, choices and options that are involved in planning a funeral service.** There is no standard homogeneous funeral service across the UK. Unlike provision of water or electricity, which are homogeneous products for which one can design packages with a set number of variants allowing customers to choose a package that suits them best, each funeral service is bespoke and influenced by national, regional, faith-based and personal family choices. The offerings of different funeral directors are accordingly highly differentiated. Dignity considers that defining any benchmark funeral would be extremely difficult, and may ultimately be futile, because in practice the sector comprises bespoke funerals with a number of variables that need to be factored in each time. For instance, research conducted by Trajectory in 2019¹³ revealed that there was no common agreement on what a respectful funeral involves. For some, elements such as flowers during the service or a newspaper obituary were essential, while for others these elements were not deemed important but other services, such as support from a funeral director in helping with legal paperwork, were considered essential. Consumer preferences and experience have further evolved during the pandemic; Dignity witnessed a decline in uptake of discretionary funeral services, partly due to Government restrictions and therefore Dignity's inability to offer some services but also arguably due to a conscious decision by certain families to reduce infection risk. It is unclear as of now how this may translate into a longer term shift in consumer preferences, such as some aspects of a traditional funeral no longer being considered important (for instance, limousine service or use of hearse) with some other aspects of service becoming more important (for instance, ability to hold online streaming for funerals and better infection control). Dignity, and a number of other providers, responded to the crisis by altering their traditional packages and allowing customers to pick and choose elements of the service and the funeral prices were adjusted accordingly. Dignity in particular also offered rebates on pre-need funerals where Dignity was unable to offer services that were paid for in the package (such as limousine hire) due to health and safety limitations. While Dignity was in any event moving towards tailored packages in recent months, the crisis accelerated customer familiarity with the concept as well. In the circumstances, defining and controlling the price of a "benchmark" funeral package may in fact undo some of the beneficial changes in the market in recent times.

2.26 **The proposal does not provide sufficient detail on the quality levels of the individual components of the benchmark package that will be used to arrive at a benchmark price.** For a price cap to be meaningful, it is essential that:

- (i) the price cap applies to a package comprising a clearly defined set of services at minimum quality standards;
- (ii) the package is defined in a way that does not prejudice high quality operators providing a higher level of service who may incur higher fixed costs as a result of

¹³ Trajectory, *Low cost and alternative funeral solutions*, page 7; submitted as Annex 1 to the CMA along with Dignity's response dated 27 February 2020 to 'Qualitative information from independent funeral directors WP'.

the quality product they offer, such as higher specifications of refrigeration with individual compartments or newer fleets of hearses; and

- (iii) funeral operators remain free to compete on the provision of lower or higher quality services or additional services in addition to being required to offer the defined benchmark package (paragraph 59).

2.27 There are practical challenges in achieving this in the funeral sector.

2.28 In particular, Dignity has the following observations on elements of the benchmark package suggested by the CMA (in Table 1 in paragraph 60(e) of the FD Price Regulation WP):

- (i) **Collection and transportation of the deceased (no time restrictions):** Dignity assumes that the CMA is proposing that funeral directors will need to provide 24*7 service. There are a number of practical challenges with this:
 - (a) Dignity notes that a number of funeral directors at present only provide this service during working hours. To comply with the requirement to provide the defined benchmark package they would therefore need to contract 'out of hours' staff to carry out the collection and transportation service and incur other operational costs (such as a call centre or receptionist to request a call out, etc.).
 - (b) It would be important to ensure practical compliance with a 24*7 service requirement by all funeral directors, since there is a risk that some funeral directors may not put the necessary arrangements in place, avoiding the associated costs, whilst others comply fully at considerable cost.
 - (c) Dignity is also keen to understand how the CMA proposes to factor into any potential cap calculations the cost base of providing such a 24*7 service, when labour costs vary across the country and, depending on the size of the funeral director, the costs would need to be divided across varying numbers of funerals.
 - (d) The CMA will also need to define what type of service is included in the defined package and whether additional charges may be applied in certain circumstances for non-standard services. For example, additional costs may be incurred by the funeral director depending on factors such as the location of the deceased (e.g. if the deceased is on the 6th floor of a building with no elevator so that multiple service operatives are required to carry the deceased down a stairwell, resulting in increased collection costs), radius of collection (i.e. if the deceased is out of the funeral director's usual area of operation and so additional transport costs are incurred), size of the deceased and accordingly type of equipment required, etc.

Dignity considers that the current proposal has failed to take into account the complexity of this initial phase of the funeral director service. In the event the

CMA is minded to design a price controlled benchmark package, Dignity recommends that the CMA:

- (a) defines a standard collection and transportation service for inclusion in the benchmark package, linked to a specific standard of service set out in the separate quality regulation remedy. Dignity notes that there are varying levels of service quality for this stage of the process as well, for instance the quality of the collection vehicle and the PPE used by staff. In the majority of cases Dignity uses bespoke private ambulances and its own 'care of deceased pack' at the time of collection, in contrast to some other providers that use non-adapted estate cars without proper equipment;
 - (b) restricts the standard collection and transportation service included in the benchmark package to office hours (8am-6pm), given the complexities of requiring multiple small funeral directors to launch a 24*7 service;
 - (c) allows funeral directors to apply additional charges where additional costs are incurred for the provision of collection and transportation services (such as for an 'out of hours' collection, if the deceased is in a difficult location, or the collection is out of area); and
 - (d) if the CMA persists with a 24*7 service requirement, it will need to adjust the benchmark prices obtained through the price survey in order to reflect the fact that some current prices will not include the provision of a 24*7 service.
- (ii) **Storage of the deceased:** The CMA is aware that different funeral directors use different types of storage facilities, ranging from air-conditioned rooms to refrigeration facilities with individual compartments. Dignity notes the CMA's proposal to introduce quality regulation in parallel, which could require the use of refrigeration to store the deceased. Some of the differences between current funeral director prices may reflect different cost bases for different types of refrigeration. This will need to be factored into the CMA's price survey when developing the price cap. For instance, an air-conditioned room would be cheaper than custom-built cold rooms, which in turn would be cheaper than individual refrigerated units. Any price cap that is not set sufficiently high could penalise the current higher quality providers and also potentially lead to a decline in quality standards, dis-incentivising upgrades or indeed the installation of any equipment above the minimal acceptable standard of refrigeration permitted by the quality regulation.

The CMA will also need to specify the maximum duration of storage that the benchmark price will cover. Where a funeral director is storing a body for a longer period of time, it may well be reasonable for the funeral director to charge additional storage charges. Particularly during the Covid-19 crisis, some families may have chosen to store the deceased for longer while they explored possible funeral options. This also links to the issue of defining what is a respectable storage option, which has become particularly acute during the pandemic. There

is currently no standard industry practice on the type of storage facilities that should be used where providers are at full capacity already – in such circumstances, some funeral providers may choose to invest in expensive short term solutions while others may choose not to do so or not be able to do so, with very different cost implications. It is unclear whether the CMA's remedy could adequately address such situations.

(iii) **Viewing of the deceased (suggested during the hours 8am-6pm):** This is not a service that all customers require. Trajectory findings indicated that 44% of arrangers viewed their loved ones before the funeral.¹⁴ Dignity therefore considers it should not be included in the benchmark package. Including this service could lead to:

- (a) funeral directors being required to offer a benchmark package including viewing of the deceased (and costs associated with it) as a mandatory element when they may not have previously offered such a service; and
- (b) propagating the notion that viewing of the deceased is a “normal” component of a funeral, to the prejudice of alternative service types (like direct cremation) where this is not an option.

In practice, there are funeral directors who are at present unable to offer a viewing service at all; some offer it only during working hours, whereas others (including Dignity) offer ‘out of hours’ visits in a number of locations. If viewing the deceased is to be included in the benchmark package, Dignity agrees that the required services should be restricted to 8am-6pm. The CMA will need to allow operators to charge for ‘out of hours’ viewing if a funeral director wishes to offer this service to customers. The CMA will also need to specify the minimum quality level to be provided for viewing the deceased through a link to the quality regulation remedy.

Dignity notes that during the Covid-19 crisis, it has not been possible for Dignity to offer a normal unrestricted viewing service due to infection control concerns. Dignity understands that this also was the case for other funeral directors. It is unclear whether the CMA's remedy could adequately address such situations. It would in the least need to specify what would happen to the regulated price if viewing of the deceased were not possible.

(iv) **Provision of a ‘standard’ coffin:** Dignity submits that there is very little (or no) consensus on what a “standard” coffin should comprise. Customer choice regarding this element also varies significantly and it is an add-on which customers could source directly from third-party suppliers, provided that the coffin meets environmental standards. Coffin type is also one of the easiest parts of a funeral for consumers to access, assess and act on information available to make an appropriate choice for their needs. Dignity therefore considers this should either not be part of the benchmark package that the CMA creates or the CMA will need to define carefully the minimal acceptable “base” coffin that should be

¹⁴ Trajectory, ‘Time to talk about quality and standards’ report, page 7; available here: <https://www.dignityfunerals.co.uk/media/2999/time-to-talk-about-quality-and-standards.pdf>

included, providing a detailed specification of the coffin (including the type of materials used, finish and fixtures). The CMA should bear in mind that coffins using sustainable materials are increasingly sourced and manufactured in ISO accredited facilities. A benchmark package using a currently more popular coffin type as the benchmark could negate any incentive for funeral directors to source sustainable and environmentally friendly coffins in the future.

- (v) **Provision of hearse and personnel:** Dignity is concerned to ensure that quality is not dis-incentivised (or under-performance rewarded). For instance, there are many different quality standards of hearse on offer, including different makes, models, age of vehicle and levels of maintenance. Dignity considers that hearses and other vehicles (such as limousines) should therefore not be included in the benchmark package. If the CMA decides to continue to include hearses and other vehicles in the package, it should specify a minimum standard of vehicle to be provided. The CMA will need to ensure that any price cap does not penalise those providers that have recently updated fleets or invest in the quality of their fleet to provide higher levels of quality than the minimum standard required.¹⁵ The same concerns apply to other elements of the package, such as provision of limousines.

Dignity notes that during the Covid-19 crisis, it did not offer a limousines service for a number of weeks due to social distancing and infection control concerns. This was considered a necessary step in the interest of staff safety and the welfare of its customers. Dignity understands that this also has been the case for other funeral directors. It is unclear whether the CMA's remedy could adequately address such situations. It would in the least need to specify what would happen to the regulated price if it were not possible for the funeral director to offer a limousine service. In any event, the demand for limousines has declined slightly in recent years. In 2015 c. 43,700 clients opted for a limousine service whereas in 2019 this number reduced to c. 37,000.¹⁶

- (vi) **Embalming:** As with viewing of the deceased, this is not a service all customers require and it is provided to varying levels of competence and training by different funeral directors. In 2019, only [%] of Dignity customers¹⁷ chose to embalm their loved ones compared to [%] in 2015 – demand for embalming has therefore declined in recent years. Dignity therefore does not support its inclusion in the benchmark package. In addition, it would be difficult to estimate a

¹⁵ Through its acquisition of funeral homes Dignity often finds that their acquired fleets are considerably older than Dignity's usual standards. If there is no competitive advantage to be gained from offering a new fleet, there would be very little incentive for Dignity or others to make improvements. This disincentive to upgrade fleets, may lead to a dearth of second hand vehicles being sold in the market. New funeral services operators that often rely on use of such second hand vehicles to enter the market at low cost, would be met with higher entry costs and a price cap, severely limiting incentives to entry.

¹⁶ Based on invoice data, excluding simple funerals. For services where a limousine was used, customers could choose one or more; the number of limousines charged may therefore not be an accurate reflection of the number of funerals where a limousine was used. Dignity has accordingly provided statistics based on number of clients above – this indicates that when taking into account all adult funerals (excluding Simple funerals) – c. [%] of clients used a limousine in 2015 compared to c. [%] in 2019.

¹⁷ Taking into account all adult funerals.

benchmark price across providers and regions and, absent very stringent quality controls, could lead to severe compromises on quality, health and safety being taken by funeral directors to save costs. If included in the package, the required service should therefore be specified by reference to the minimum quality requirement, determined in consultation with the British Institute of Embalmers.

Dignity notes that during the Covid-19 crisis, it did not offer an embalming service due to infection control concerns.¹⁸ Similarly, embalming cannot be offered where the deceased has been suffering from other infectious or highly communicable diseases. It is unclear whether the CMA's remedy could adequately address such situations. It would in the least need to specify what would happen to the regulated price if embalming of the deceased were not possible.

2.29 **The CMA has not factored in all possible unintended distortions that make this remedy option unattractive.** The CMA has identified a number of risks at paragraph 75 of the paper. Dignity notes that additional unintended distortions may arise as a result of the proposed price cap:

- (i) the proposal could dis-incentivise the development of alternative lower cost options if the price cap unduly influences consumers to choose the benchmark package and/or if funeral directors are required to offer the CMA's benchmark package and bear the infrastructure/costs required to provide the services included;
- (ii) the existence of the price control could induce customers into reducing advanced planning and/or reduce the take-up of pre-paid funeral plans. Customers may be misled into thinking that the existence of the price control meant that funeral services would not remain a significant expense going forward or would be offered at standard pricing, negating the need to shop around or plan ahead. Continuing with the price control would therefore become more likely in the future. Instead the CMA could use this opportunity to spread awareness and shape consumer behaviour in a way that achieves long term sustainable change in the market, restoring conditions of effective competition; and/or
- (iii) the package could become stigmatised as the "price-controlled package", leading to consumers being more likely to pay for additional elements than they might otherwise have been.

2.30 The mitigations considered by the CMA in paragraph 76 to address the potential distortions also have some shortcomings:

CMA's proposed mitigations	Dignity concerns
Compliance requirements could vary based on size of funeral director, for example	Given the significant proportion of the market served by smaller funeral directors, it is important that they comply with the CMA's remedies package.

¹⁸ This was partly also due to conflicting advice from authorities and no specific guidance on the subject.

<p>exemption or simplified reporting for the smallest funeral directors.</p>	<p>In some ways, smaller funeral directors may present greater risks to consumers where, for example, they do not have a robust complaints procedure. Provided the compliance requirements are reasonable, it should be possible for smaller funeral directors to comply in full and, in some ways, the reporting should be simpler than for funeral directors with multiple branches across the country (who would potentially have to ensure compliance with regional price caps set at different levels).</p>
<p>Mitigate risk that the maximum price becomes a focal point by capping the average revenue per funeral.</p>	<p>See Dignity's detailed response at paragraphs 2.39 to 2.41. Dignity does not support the use of a cap on average revenue per funeral. This would also increase compliance costs for both large and small funeral directors.</p>
<p>Alternatively, set the level of a price cap at a relatively low price point, which would reduce the number of providers with flexibility to 'price up' to the level of the price cap from their existing price levels.</p>	<p>This could result in some operators going out of business if the low price cap would not enable them to make a profit. A low price cap would likely result in a reduction in competition on price, incentives to decrease quality, less innovation due to a decreased ability to fund this, as well as deterring new entry. The CMA would also need to consider carefully the impact of the increased costs that funeral directors have incurred during the Covid-19 crisis, such as increased PPE at inflated prices, expanded mortuary facilities and service adaptations, such as installing perspex screens in limousines and increased cleaning to ensure infection control and social distancing.</p>
<p>Improve information transparency which retains incentives to offer funeral services at prices below the cap.</p>	<p>To the extent the CMA is satisfied that transparency remedies will stimulate price competition (below level of the cap in this scenario), the price control would itself be unnecessary and an onerous requirement imposing costs on the industry and the CMA, that will be passed on to customers in some form. In addition, consumers are less likely to use a comparison platform or other transparency tools if price caps are in place.</p>

2.31 Set out below are Dignity's detailed comments on the consultation questions contained in the FD Price Regulation WP.

Responses to consultation questions at paragraph 60

(a) Are there any products or services which are not currently included in the suggested benchmark package (Table 1) 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 (Table 1) which should not be included? What is the evidence to support this view?

2.32 Please see detailed comments above at paragraph 2.28. In summary, Dignity is concerned that the proposed benchmark package includes:

- (i) items that are discretionary and which not all consumers will want (e.g. embalming, viewing, limousines) and that indeed it has not been possible for Dignity to provide during the Covid-19 crisis;
- (ii) services not currently provided by all funeral directors (e.g. 24*7 service for collection and transportation, embalming) where they would need to incur costs to provide the benchmark package;
- (iii) services where the installed cost base may be very different across different funeral directors and operators with higher costs should not be prejudiced by the price cap (e.g. individual refrigeration units); and
- (iv) elements that can be provided to varying levels of quality and are difficult to standardise across all providers and therefore should be excluded from the package (e.g. coffins, hearses). Alternatively, a clear quality specification should be included.

2.33 It is therefore unclear how any practical and fair price cap could be determined in this scenario.

(c) Do you consider that there is evidence to suggest a lower or declining demand for any products or services in the suggested benchmark package, in particular we seek views on the use of limousine/s and embalming?

2.34 Dignity considers that discretionary products and services, such as limousines and embalming, should not be included in the benchmark package. There has been a decline in uptake of these options over the years (see paragraphs 2.292.28(v) and 2.28(vi) above.

2.35 As regards coffins, whilst not always discretionary, there is considerable variation in the quality and type of coffins that consumers purchase. The demand for these elements therefore varies between customers.

(d) 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?

- 2.36 Please see detailed comments above at paragraph 2.28. Dignity considers that the services in the benchmark package should be limited to normal operating hours (8am to 6pm). Funeral directors should be allowed to charge for 'out of hours' services provided (for collection and transportation of the deceased or the viewing of the deceased), and for additional costs incurred for non-standard services (e.g. collections from a difficult location or out of area). The CMA should include a standard storage duration in the benchmark package but funeral directors should be permitted to charge for extended storage requirements.
- 2.37 Dignity considers that there should be restrictions on the choice of route for the funeral procession included in the benchmark package, with this being restricted to the direct (shortest) route to the crematoria or burial ground. Funeral directors should be allowed to charge for additional costs incurred in cases, for example, where the deceased is taken into church the night before, where the funeral procession starts from an alternative location, or where the bereaved request a bespoke route past certain locations. There is no average or ballpark figure that can be used for estimating the costs incurred in servicing such bespoke requests and including these in a hypothetical benchmark package would not be practical.

(e) Are there any funeral director providers for whom the suggested "standard" benchmark funeral package (Table 1) would not be a suitable product/service to offer, for example a funeral director offering highly specialised or unique services?

- 2.38 As mentioned above, a number of funeral directors do not offer 24*7 collection and transportation of the deceased and some also do not offer embalming. There are also a number of funeral directors that cater to specific faith groups (Jewish, Greek Orthodox, Muslim etc.) that may not need to provide some of these services (for instance embalming and longer storage would not be required for faiths that require the funeral to be held shortly after death). Similarly, there are funeral directors that focus on "alternative" funerals, such as green funerals and direct cremation providers, who do not provide many of the elements of service included in the CMA's benchmark package proposal. However, it would be ineffective, unfair and unreasonable to exclude such providers from the potential price cap. The CMA should therefore ensure that the benchmarked package is suitable for use by all funeral directors.

(f) We are also considering whether an alternative approach, in particular a cap on average revenue per funeral, could be effective in addressing any AECs and customer detriment, whilst also addressing unintended market distortions such as the risk of a focal point for prices. Do you think this could be a better approach for price regulation?

- 2.39 Dignity considers that this is a more complicated and impractical approach. It is unclear how funeral providers of varying sizes and different product mixes could put measures in place to ensure compliance with such a regime given that consumers decide their specific funeral requirements and may choose more expensive options. This could result in a perverse incentive for funeral directors to discourage consumers from buying the services

they wish to purchase in order to hit the average revenue cap for the relevant period. Please see in this regard Dignity's submissions at paragraphs 2.9 of its response to the CMA's working paper on 'Funeral Directors – price dispersion analysis',¹⁹ for further details of how the average funeral revenue varies significantly across funeral directors and also between different branches of a funeral director.

- 2.40 Almost all funeral directors offer multiple packages, and with changing customer preferences, it is difficult to predict the uptake for each package as this differs between locations, determined by such factors as the local population's spending habits, purchasing power, age and beliefs. Further, each funeral is to a great extent bespoke (even if it starts as a pre-advertised package), for instance a very expensive coffin, multiple limousines, specialist hearses (such as horse drawn) or an expensive memorial in a handful of arrangements could significantly impact the average revenue per funeral. At its most extreme, this could lead funeral directors to refuse to offer those clients requesting a more bespoke funeral the service they want and are able to afford.
- 2.41 Dignity has serious concerns about the extent of monitoring, price-adjusting and reporting regimes that will need to be implemented by all funeral directors to comply with a hypothetical revenue cap. It considers that the costs of such an exercise, along with additional costs for the CMA to monitor and test the results, would be unjustified in a scenario where the funeral sector is already experiencing intensifying price competition and increased demand for cheaper funeral options.
- 2.42 Moreover, smaller independent funeral directors may not have the ability to estimate revenue accurately by funeral type (as already experienced by the CMA).²⁰ It is possible therefore that this could increase barriers to entry, and to expansion, for these types of firms and the CMA should take these practical difficulties into account when considering a design for a potential price control.

Responses to consultation questions at paragraph 101

(a) Do you agree that the introduction of a price control is 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?

- 2.43 No. Dignity does not consider that price control of funeral directors is likely to be an effective solution to remedy any AECs or any detrimental effects on consumers, for the reasons set out above at paragraphs 2.1 to 2.18.
- 2.44 Dignity strongly believes that improving transparency of pricing and quality, along with controlling back of house quality standards and helping consumers to plan in advance through the support of intermediaries would sufficiently accelerate the increasing price competition in the market, and remove the need for any form of price controls.

¹⁹ Response submitted on 12 June 2020.

²⁰ The CMA's working paper on '*Funeral Directors: Profitability Analysis*', Appendix A.

2.45 The CMA is aware of the highly fragmented and differentiated nature of the market: the significant number of participants, the ease of entry, and the increasing number of alternative competitive offerings, such as green funerals, direct cremation and low cost funeral providers. The industry is also in the midst of Covid-19 crisis which has had a significant impact on the type of services that can be offered whilst achieving social distancing and minimising infection control concerns, as well as increasing funeral director costs. Dignity is concerned that a price control intervention at this stage would in fact be counter-productive. It could significantly reduce the level of competition in the market by forcing out some higher quality funeral providers or requiring them to reduce the level of quality they provide, as well as reducing incentives for entry and expansion. It would also distract from efforts to improve overall health and safety standards and infection control processes, which is the urgent need in light of the Covid-19 crisis. It could also lead to the cap becoming a focal point for price, and continue to promote the kind of customer inertia that historically led to lack of transparency, less shopping around and higher prices.

(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?

2.46 No, for the reasons set out above at paragraphs 2.1 to 2.18 and in response to the question at paragraph 101(a).

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

2.47 To the extent the CMA considers that a price control remedy ought to be implemented, Dignity strongly considers that such regulation should extend to all funeral directors without prejudicing any particular business model. In the absence of such uniform application, the remedy would unfairly prejudice some market participants, causing serious distortions to competition.

(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)?

2.48 As stated above in response to the question at paragraph 101(c), Dignity considers that any potential price control remedy should apply to all funeral directors. A partial price control applicable to only certain providers would be likely to lead to greater market distortions.

(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)?

2.49 While in theory the CMA could apply a maximum price to a benchmark package, Dignity has concerns (noted above) as to how the cap would be calibrated to ensure that efficient competitors are not driven out of the market, that there is sufficient incentive for market entry and that the cap does not lead to perverse incentives to reduce quality and

innovation, while at the same time factoring in the currently diverse quality propositions offered in the market.

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

- 2.50 No. Please see detailed response above at paragraphs 2.25 to 2.28. If the CMA is determined to adopt a price control, Dignity would recommend a substantially pared down “essentials” package that could be subject to a control – such as collection (within defined office hours), transportation, storage (for a set period of time) and basic care (cleaning and dressing the deceased in own clothes). [X]. Even for such a package, the CMA will need to engage on how the differences in existing quality options and their respective cost bases are factored into any price cap to avoid unintended consequences of putting higher quality operators out of business.

(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?

- 2.51 See response above at paragraph 2.38.

(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)?

- 2.52 See response above at paragraph 2.34.

(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))?

- 2.53 See response above to paragraphs 2.36 and 2.37.

(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)?

- 2.54 Dignity agrees that funeral directors should be required to pass through disbursement costs to the client at cost. In order to strengthen this remedy, the CMA could also require that an itemised list of disbursements is provided along with invoices so that the bereaved can check the items have been passed through at cost.

(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))?

- 2.55 No, Dignity does not consider this to be a practical alternative, for the reasons set out at paragraphs 2.39 to 2.42 above.

(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))?

- 2.56 To the extent the CMA considers it necessary to implement a price control, Dignity strongly recommends that this be on a UK-wide basis, in order to avoid distortions to competition. However, the level at which a price cap is set should factor in regional differences (see paragraph 2.57 below).

(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))?

- 2.57 Dignity considers that regional price differentials exist in the funeral market reflecting local conditions including consumer purchasing power, consumer spending habits and the local cost bases for funeral providers in terms of rent, labour costs, etc. The CMA has itself noted significant price dispersion across funeral service providers with perhaps the largest difference being in prices across the UK, which reflect differences in underlying costs, death rates, and customer type (faith, income and demographic concentration). Any control would need to account for this regional variation. The CMA will accordingly need to develop a mechanism to weight any price remedy to reflect local cost considerations and this could result in differing regional or devolved nation prices.

(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)?

- 2.58 As a national provider of funeral directing services, Dignity supports a single overarching regulatory regime across the whole of the UK. To the extent 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.

(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: implementation, monitoring and enforcement?

- 2.59 Dignity considers that this proposal of a price-capped benchmark funeral poses significant concerns for all three aspects, but particularly for implementation i.e. defining the benchmark package and setting a reasonable maximum price for this package. This is on account of the differentiated and heterogeneous nature of the services being provided (see further at paragraphs 2.25 and 2.28 above). Reasonable monitoring and enforcement activities will therefore need to be put in place for all funeral directors.

(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))?

- 2.60 Yes. To the extent a price control is implemented, compliance reporting requirements should be put in place for all funeral directors. In many ways, depending on the complexity of the requirements, the reporting requirements could be easier for a smaller funeral director than for a large funeral director operating in multiple regions, potentially with different maximum price levels. Dignity is however concerned by the challenges faced by the CMA in gaining reliable data on the over 3,500 small independents operating in the market (see paragraph 2.16 above). It is therefore unclear whether compliance with a regulated price would be effectively achieved across the market, in a manner that does not prejudice the larger providers.

(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))?

- 2.61 Existing trade bodies could form part of any communication strategy for funeral directors. As regards customer-facing initiatives, Dignity considers the appropriate use of intermediaries along with Government-led awareness campaigns should be sufficient.

(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?

- 2.62 This would depend on the nature of the price remedy and what monitoring and reporting obligations are imposed on funeral service providers.

- 2.63 Dignity however anticipates that the key action points for all funeral directors would be:

- (i) assessing the requirements of the price control and determining how that interacts with current pricing;
- (ii) to the extent that changes are required, working with commercial teams to identify revised pricing as well as assessing how this interacts with costs and whether any changes in service offering are necessitated;
- (iii) to the extent any services that are mandatory to provide as part of the new benchmark package are not currently offered by the provider concerned, developing the capabilities to provide these services (which could take up to a few months if something more significant like hiring limousines or trained embalmers is required);
- (iv) developing pricing communications, training staff and rolling out revised sales material across branches; and

- (v) developing monitoring and reporting mechanisms to evidence compliance with the control.

2.64 The key time-consuming elements would be amending existing financial and operating systems, combined with an intensive education and training rollout to effectively deliver structured compliance with the remedy. Dignity is currently undergoing a transformation programme which is aimed at modernising the client proposition, its operating model and central support. Dignity will also have to consider the extent to which a potential price control will affect this programme.

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

2.65 Dignity is unable to provide a view on this as it would depend on the extent of variation required to existing services, pricing structure, staff training and internal operational and financial systems.

(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)?

2.66 Given the onerous nature of a price control remedy, it may 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 first bring into force its proposed information and transparency remedies, enhanced role for third party intermediaries along with programmes that promote advance planning and quality regulation. If these are effective in stimulating competition in funeral director services (Dignity expects they would be)²¹, 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 funeral directors, overall average prices for services), such that there is an objective goal and stimulus for market participants to educate customers and the market continues to evolve as it has in the past few years. Dignity firmly believes that the most effective remedies to address the potential AEC in funeral director services will be those that address demand-side issues in the long term, namely, information and transparency remedies.

2.67 In any event, even if a price cap were to be implemented immediately, given the highly interventionist nature of the remedy and the considerable risks as to whether it will be effective, reasonable, proportionate or practical, Dignity urges the CMA to build in a mechanism to re-assess the value of continuing the price control beyond an initial 2-3 year period.

²¹ Trajectory research indicates that only 36% of respondents said they would know where to get more information about direct cremations. While there is demand and interest in this and other alternatives, there is currently lack of access to information which is preventing greater uptake. Trajectory, *Low cost and alternative funeral solutions*, page 24; submitted as Annex 1 to the CMA along with Dignity's response dated 27 February 2020 to 'Qualitative information from independent funeral directors WP'.

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

2.68 Please see comments above at paragraphs 2.29 and 2.30

3. Comments on the local authority tendering remedy option

3.1 For the reasons set out below, Dignity is:

- (i) not convinced that the proposed LA tendering remedy will be effective in remedying or mitigating any AEC identified by the CMA; and
- (ii) concerned that implementing such a remedy could result in a loss of competition in funeral services in the longer run resulting in a further AEC.

Responses to the CMA's Consultation Questions

Para 49(a). To what extent do respondents think that wider introduction of tendered LA low-cost funeral schemes, intended as a response to problems identified on the demand side of the market would be: (a) effective; (b) proportionate.

3.2 Paragraph 9 of the LA Tendering WP notes that the “rationale for including LA tendering as part of a remedies package would be as a response to any AEC we may find arising from weak consumer engagement on the demand side, due to factors such as emotional distress and time pressure”. Paragraph 10 notes that the remedy could help address the AEC by “a degree of competition ‘for the market’, reflecting local cost and demand conditions, rather than regulating outcomes directly. To the extent that by winning a LA tender, funeral directors have the prospect of carrying out higher funeral volumes, this may result in lower (average) costs and may help reduce the prices which they agree with the LAs, and ultimately charge to consumers”.

3.3 These paragraphs suggest that:

- (i) The LA tendering remedy should be an alternative to funeral director price regulation (rather than being implemented in parallel with funeral director price regulation). It would be disproportionate to implement both price regulation and LA tendering for funeral services;
- (ii) While the LA tendering remedy may result in lower pricing in the short term if a funeral director with low pricing wins the contract, this may reduce competition in the long term if this results in significant decreased volumes for other funeral directors in the area who may then go out of business or have to increase prices to cover fixed costs. Such funeral directors may then be unable to tender competitively or at all for the LA contract in the next tender process.

3.4 Paragraph 30 of the LA Tendering WP suggests that an option under consideration is for LAs to “encourage the use of the LA scheme as the default funeral arrangement in prescribed circumstances (for example, in the case of deaths in LA-operated care homes, or deaths where the Coroner or Procurator Fiscal is involved) with consumers able to opt

out at appropriate points (e.g. pre or post initial collection of the body) and use a different funeral provider or choose a different funeral package”. Dignity has concerns about the logic of such an approach, which appears to run counter to the essence of some of the other remedies under consideration that are designed to stimulate customer engagement in choosing a funeral director. It could also discourage customers from choosing other low cost options, such as direct cremations. There would also be considerable practical challenges over how to allocate funerals fairly if there are a number of firms appointed under the LA scheme.

3.5 In addition, Dignity notes there would likely be considerable differences in implementation across the country which could result in customer confusion about the nature of LA low cost funeral options, for example:

- (i) some local authorities are already experienced in running such tender exercises whereas others are not and may find such an exercise complex. Whilst some local authorities see value in collective tendering arrangements, it is not clear that this is yet a widespread perspective. It is therefore difficult to see how a remedy that mandates LAs to carry out a competitive tender process could be implemented effectively in circumstances where individual local authorities are not acting voluntarily;
- (ii) some contracts with anticipated higher volumes of funerals (e.g. urban areas) will be more commercially attractive to bidders than others in less populous areas (e.g. rural areas) where the LA may struggle to generate sufficient interest in the tender; and
- (iii) as shown by the evidence in Appendix A of the LA Tendering WP, local authorities may take different approaches on important issues such as whether to procure a low cost minimal funeral package or a fuller package, and whether to award contracts to one or more funeral directors.

3.6 The CMA should also take into account the bidding costs that would be incurred by funeral directors in taking part in the LA tender exercise. In some circumstances, these will disincentivise participation in the tender exercise, for example where a high quality funeral director assesses its chances of winning as low since it considers it will not be able to match the lower prices of local competitors in the area or where the LA is planning to appoint only one funeral director.

3.7 For the reasons set out above, Dignity is not convinced that the LA tendering remedy would be effective in addressing a demand-side AEC identified by the CMA. It would also be disproportionate to impose the LA tendering remedy in addition to price regulation for funeral directors.

Para 49(b). How should the specification of the funeral product to be provided under a LA scheme be determined? (i) Should the focus be on delivering a competitive negotiated price for a ‘standard’ funeral package, or addressing funeral poverty through ensuring availability of a low-cost respectful funeral option? (ii) How much scope, if any, should there be for variations between LAs?

- 3.8 In order to be an effective remedy, the CMA would need to specify what type of funeral the local authorities should tender. Otherwise there could be differences around the country, confusing customers as to what an LA scheme funeral comprises. However, the approach of recommending a uniform or “standard” package could have the disadvantage of being unresponsive to local needs and variations (as noted in paragraphs 8 and 32). On the other hand, recommending a low cost option could result in social stigma about using the LA scheme funeral, negatively impacting the uptake of the option.

Para 49(c). What might be potential unintended consequences of wider LA tendering for low cost residents’ funerals?

- 3.9 If the LA scheme funerals proved popular with customers, this could have an adverse impact on the volume of funerals for which other funeral directors, who are not on the panel, could compete. This could result in less competition in the long term if those funeral directors go out of business or have to increase prices to cover fixed costs. Such funeral directors may then be unable to tender competitively or at all for the LA contract in the next tender opportunity. This may also deter new entrants from entering a local area if they are not on the LA scheme panel. Further, this remedy may dis-incentivise improvements in quality and innovation, unless the tendering process ensures that funeral directors are added to the panel based not only on price but on a combination of factors, including quality of service and value for money.

Para 49(d). What are the current barriers to LAs establishing tendered low cost funeral schemes (e.g. available resources, other priorities, not regarded as a LA responsibility, etc)? How might they be overcome?

- 3.10 This question is best directed to LAs. However, Dignity believes that bereavement services may not always be a high priority among the wide variety of services offered by LAs and may suffer from inadequate funding.

Para 49(e). What are the barriers to funeral director participation in LA tenders for resident schemes? How might they be overcome?

- 3.11 The main barriers to funeral director participation in LA tenders are likely to be:
- (i) **Commercial attractiveness** of the area where services are being tendered, with more populous areas likely to be more attractive due to likely higher volumes of funerals under the contract;
 - (ii) **Bidding costs and chance of winning** – the funeral director will need to weigh up the costs (in terms of management time as well as costs incurred) of participation in the tender process against their perceived likelihood of successfully being awarded a contract and the likely number of funerals they would gain from that contract. High quality operators may be deterred from participating where the tender documents emphasise funeral price as being the key evaluation criterion rather than the value for money offered.

Para 49(h). What should be the CMA's priorities for further analysis or evidence gathering on existing schemes?

- 3.12 Dignity recommends that the CMA prioritises gathering further data from existing providers of LA schemes, including on funeral director participation in the tender processes and on consumer use of the LA funerals at negotiated prices. The limited evidence in the working paper suggests that current consumer use of LA schemes is low. If this finding is validated, the CMA should work to understand why consumers are not using LA funeral schemes. If there is social stigma about taking up a LA funeral, then the CMA would need to consider how to mitigate this, else the LA tendering remedy would not be effective. These findings should be published to provide an opportunity for Dignity and other industry players to comment on them.

Para 49(i). Do respondents think that the outcomes of the current and future LA tendering exercises for provision of resident funeral schemes could provide useful data points for benchmarks to feed into price controls?

- 3.13 Dignity does not consider that the LA scheme prices would be suitable data points for benchmarks to feed into price controls. There are considerable variations in the contents of the current LA resident schemes in terms of what is included in the package. Even if a standardised package were to be introduced for a future LA tendering remedy, the prices offered by funeral directors would generally include a discount for a guaranteed or expected volume of funerals in that local area, enabling the funeral director to spread its fixed costs across this volume of funerals. This is not relevant when pricing individual funerals for consumers. The LA scheme tender could be won by a very low cost operator or a new entrant operating at a loss in order to gain a foothold in the local area. Any prices obtained from such operators would not be reflective of costs in the wider market. Dignity considers that such an approach could very easily result in the price cap not being set at a commercial level for individual funeral pricing, and this would particularly prejudice funeral directors with higher quality services, who may then be unable to make a profit and be dis-incentivised from maintaining their quality, to the long term detriment of consumers. In some circumstances, use of the LA scheme prices for a price cap benchmark could also create perverse incentives for funeral directors to bid higher prices.

Para 49(j). Please provide any other relevant comments or observations on these proposals.

- 3.14 In the event the CMA pursues this remedy option, it will also need to consider whether the availability of the schemes would be based on the deceased / arranger's postcode, whether there would be a minimum number of years of residence stipulation, and whether consumers would be able to take advantage of a scheme price from a neighbouring LA-run scheme (which would be particularly relevant for residents living near LA boundaries).