

## FUNERAL MARKET INVESTIGATION

### PROVISIONAL DECISION REPORT

#### CO-OP RESPONSE

17 September 2020

#### 1 Introduction

- 1.1 This document sets out Co-op's response to the CMA's Provisional Decision Report (**PDR**) published on 13 August 2020 and constitutes our formal response to the invitation to submit reasons in writing why the provisional findings and the proposed remedies package set out in the PDR should not become final (or should be varied).
- 1.2 We believe that many of the provisional findings and the proposed remedies package set out in the PDR require significant further consideration and revision before a final report is produced. In summary:
- (a) The evidence does not support price regulation.
  - (b) The recommended 'supplementary MIR' is without precedent, justification or any legal basis. It is entirely wrong for the CMA to effectively continue its market investigation beyond the statutory time limits. This wholly unnecessary recommendation will damage the industry through increased costs and uncertainty.
  - (c) The CMA's calculation of customer detriment is materially wrong. The evidence does not support a finding of an AEC and the CMA's headline figures are damaging to the industry.
  - (d) We have material concerns about the standard of evidence set out in the PDR.
  - (e) The CMA's analysis has been backward looking and has failed to take account of the huge changes that have taken place and will take place in the future.
- 1.3 We ask the CMA to consider the comments set out in this response and to make amendments that address these concerns. We shall be happy to engage further with the CMA to discuss this. Failure to comment on a particular element of the PDR (or any of the appendices) should not be read as acceptance of it.
- 1.4 The Covid-19 pandemic has, unfortunately, tested the funeral sector to the full. In very difficult circumstances, our colleagues have demonstrated extraordinary levels of empathy, adaptability and resolve in order to deliver high levels of care at fair prices. The ongoing national crisis has served to underline that our colleagues are at the frontline of a caring industry. Our colleagues have stepped up and delivered exceptional levels of service and support when others haven't been able to help. When crematoria services have been reduced or limited or when celebrants have been unavailable, our colleagues have been there, doing their very best to support the bereaved. It is difficult to over-state the levels of dedication that our colleagues have demonstrated during this emergency. It is clear that they view their role as a vocation and they work long hours, day and night, seven days a week to collect the deceased, arrange funerals and do all that they can to look after and comfort our customers in their darkest moments.
- 1.5 Sadly, the PDR has made no acknowledgement of the funeral industry's contribution during the pandemic. The media, which has celebrated the role of the NHS, has largely been silent about

the extraordinary efforts of the carers/ key workers working in the funeral services industry. Colleagues who have experienced the impact of Covid-19 will be disappointed to read the PDR. To take just one example, the prohibitions on loved ones visiting the deceased has been heart-breaking for families unable to say 'goodbye'. Those of our colleagues who have (at families' request) taken photographs of the deceased or who have spent time sitting with the deceased on behalf of the family will be very disappointed by the CMA's perception of their industry as one which takes advantage of vulnerable customers. We hope that the CMA's final report will take a moment to recognise the exceptional efforts of the funeral industry and the outstanding people who have chosen to make it their vocation.

- 1.6 The CMA's timetable targets December 2020 for the Final Report which provides insufficient opportunity for meaningful consultation, in circumstances where it has introduced significant new evidence for the first time in the PDR (notably in section 3 of the PDR) and appears to reach conclusions that could have long term consequences for the sector. The Market Study and Market Investigation has been a lengthy and expensive process for the industry and the truncated timetable does not allow for full and proper scrutiny at the most critical stage. To the extent the PDR is reaching conclusions on remedies and in particular, on the need for price regulation, this is a wholly inappropriate timetable and we ask the CMA to extend the timetable to the full statutory period.

## 2 Executive Summary

- 2.1 Firstly, the PDR pre-empts a conclusion that '**measures that control pricing outcomes are...likely to be necessary**'<sup>1</sup> and anticipates a further MIR as a shortcut to developing such a remedy, without:
- (a) seriously testing this conclusion;
  - (b) establishing the need or the proportionality for this onerous remedy;
  - (c) addressing the substantial amount of evidence put forward that (i) the market has changed; and (ii) price control remedies would be ineffective and counterproductive; or
  - (d) assessing the scale of any AEC (and therefore the proportionality of any extreme remedy).
- 2.2 The CMA has no justification, no legal basis and no need to recommend a 'supplementary MIR'. To do so will deprive the sector of the certainty that they are entitled to expect at the conclusion of a lengthy and costly market investigation. The CMA already has the power to make another MIR at any time in the future, if the legal thresholds are met. There is no legal basis for a 'supplementary MIR' which appears designed to prolong the market investigation beyond the clear limits imposed by Parliament. The uncertainty created will undermine the aims of the legislation to fix statutory timetables for MIRs, which were introduced to reduce the cost and uncertainty on businesses from extended investigations. The uncertainty is compounded here by ambiguity and inconsistency about when a future MIR might take place.
- 2.3 The CMA has not engaged with the material evidence which has already been presented to it in response to the working papers. By the CMA's own admission, remedies design would require substantial further market engagement. In appearing to conclude now that price regulation would be possible, effective and proportionate, the CMA is improperly pre-empting any such future consultation and assessment.

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<sup>1</sup> CMA (2020), 'Provisional Decision Report', para 9.227.

2.4 Remedies to address price transparency and quality are likely to be positive for the sector and in substance, the core remedies that the CMA has proposed implementing now are welcome. However, **aspects of the proposed remedies are likely to be ineffective**. The CMA has failed to consider the impact of the remedies package in the round and the remedies do not reflect the interdimensional relationship between price, quality and service. Individual remedies have not been properly considered:

- (a) the proposal to retrospectively prohibit any arrangements with hospices, care homes or similar institutions<sup>2</sup> directly impacts existing and proposed arrangements that we believe are ultimately beneficial to customers;
- (b) increasing transparency without simultaneous measures to protect quality will have a damaging impact; we are concerned by the likely substantial time-lag between implementation of transparency remedies and the introduction of regulation to improve quality of back of house standards;
- (c) the proposed continuing review of the funeral sector only intends to proactively gather information relating to funeral volumes and price, and not quality standards or other customer outcomes. This will improperly skew the market towards considerations of price without appropriate consideration of quality or service. Such a review process will not form a fair basis for any future MIR;
- (d) the PDR does not adequately consider international models (not least in relation to potential price control remedies which are untested anywhere in the world); and
- (e) the CMA's analysis of the crematoria market highlights fundamental problems, which have been further illustrated over the course of the Covid-19 pandemic but have not been addressed in any way (see section 5 below).

2.5 The **evidence base and the analysis** set out in the PDR falls materially short of the standards required:

- (a) by concentrating on the period 2014-2018, when later data was made available that shows increasing evidence of a changing market, the CMA has materially misrepresented the market as it is in 2020 and fails to take account of the evidence of expected changes in the future;
- (b) new evidence has been introduced at a late stage which does not provide a robust basis for policymaking or analysis (see section 3 below);
- (c) the CMA's analysis of the market for funeral services and the competitive dynamics is wrong. It fails to properly account for the strength of competition, the significance of market share decline for the largest market players and the implications of the growth of low cost options on the market, including amongst smaller operators who do not have a clear distinction between standard and lower cost products. There is clear evidence that the market is in the midst of substantial change, yet by insisting on a backward looking analysis based on evidence going back a number of years, the CMA fails to adequately give weight to that change (see section 4 below);
- (d) the CMA's analysis of profitability in the funeral services market is incorrect and neglects important non-price factors (see section 4 and Appendix 1 below); and

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<sup>2</sup> CMA (2020), 'Provisional Decision Report', paras 9.251(a) and 9.252

- (e) the calculation of customer detriment is based on an opaque methodology that appears fundamentally flawed and highly likely to significantly overstate the level of detriment. The CMA's highly questionable methodology has produced a headline figure of detriment which does not represent a realistic level of AEC in this market today, and could therefore be seized upon and misinterpreted by the public. It is presented without any consideration of quality differentials (see section 7 below). We strongly disagree with the CMA's conclusion that there is little qualitative difference between funeral directors and seriously question the evidence base on which such a conclusion has been reached.

2.6 We are concerned that the CMA has **wrongly commoditised** (or sought to commoditise) funeral services by failing to reflect the interdimensional relationship between price, quality and service. The PDR states that '*good standards can be achieved without necessarily entailing high costs and price's*<sup>3</sup>. The CMA even presents evidence that funerals have become '*commodities*', (without any supportive evidence for these claims) and that a funeral service is a '*good*' to be provided by a '*supplier*' which people '*consume*'.<sup>4</sup> We couldn't disagree more with this cold description of the caring services that our hard working, skilled, empathetic colleagues provide. These relatively minor (but jarring) comments lead us to believe that the CMA has fundamentally misunderstood the nature of funeral services and proposed remedies that commoditise a personal service. Every funeral is unique and funeral services are anything but '*commodities*' that can be assessed and measured against other commoditised goods.

2.7 Viewing funeral services as fungible goods has led the CMA to design a series of remedies that miss the essence of what funeral services are. Our customers want services that are specific to each funeral: by its very nature, this requires time but the PDR leaves us with the impression that the CMA views time spent with customers as an indication of inefficiency. We have brought evidence to the CMA's attention from time and motion studies demonstrating that there is very wide variation in the amount of time spent to arrange and conduct each individual funeral. Personalisation is not something that can be merely added to a funeral in a way that becomes more and more efficient as time passes. It requires significant staff time, as it involves a close dialogue with the client that leads to solutions and actions that are specific to each particular case. This directly contradicts the CMA's view that clients' personalisation requirements do not translate to additional costs for funeral directors.

### 3 Response to Section 3 of the PDR: How people choose a funeral

#### *Introduction*

3.1 Section 3 of the PDR relies heavily on three new supporting papers commissioned by the CMA. We have concerns about new research being introduced as evidence in the Market Investigation at such a late stage, as there is little time for scrutiny. Scrutiny is required in this case since the three supporting papers do not provide a robust basis for policymaking or market analysis. Without amendments, the weight given to these documents as evidence should be extremely low. The flaws in these supporting papers critically undermine section 3 of the PDR.

- (a) **Exploring Consumer Vulnerability in the Funeral Market, Rapid Evidence Assessment (REA) conducted by NatCen.** The nature of a rapid evidence assessment is that it misses nuance and cannot survey the whole literature. For example, the REA is based on a very small sample of relevant papers, many of which are themselves based on small sample sizes (as low as 6 participants). The statistical

<sup>3</sup> CMA (2020), 'Provisional Decision Report', para 7.107.

<sup>4</sup> CMA (2020), 'Summary of Meeting with Kate Woodthorpe', para 5.

significance (and thus reliability) of the cited literature was not assessed in the REA. As a result it does not provide a robust evidence base on which to make policy. Only 12 of the 39 papers reviewed in the REA relate to bereavement, and only 5 of those papers actually relate to funerals. A number of these are also several years old and are unlikely to reflect current customer behaviours or changing market dynamics. We have significant concerns about the ability of the ‘transferable’ papers reviewed in the REA, which explore decision-making in a variety of contexts, to offer meaningful evidence on consumers’ ability to make decisions in relation to funerals. In any case, the REA notably does not support intrusive remedies, such as price regulation, in the funerals market.

- (b) **The Summary of a round-table discussion with NatCen and external attendees and the Summary of meeting with Kate Woodthorpe.** We have serious concerns about these two documents being introduced as evidence in the Market Investigation. They rely on a single discussion by a small number of individuals. Additionally, the individuals attending the roundtable are not named. It is therefore impossible to evaluate whether they are indeed experts in this field. These two documents contain a large number of hypotheses and anecdotes which are not substantiated with data or any other kind of evidence. This document does not list a single source other than the REA. It is therefore impossible for others to check the factual claims within.

#### *NatCen Rapid Evidence Assessment*

3.2 We have concerns about this REA being introduced as evidence in the Market Investigation at such a late stage. In any case, the evidence included in the REA notably does not support intrusive remedies, such as price regulation, in the funerals market.

- (a) The nature of a REA is that it misses nuance and cannot survey the whole literature. As we explain below, these flaws are evident in the REA. Given the overall length of the Market Investigation, it is unclear why the CMA did not commission or conduct a full literature review.
- (b) The REA is based on a very small sample of relevant papers, many of which are themselves based on small sample sizes. For example, the REA lists 12 papers as being relevant to bereavement, with 27 listed as ‘transferable’. Of the 12 papers listed as relevant to bereavement, only 5 relate to funerals. We have significant concerns about the ability of the ‘transferable’ papers reviewed in the REA, which explore decision-making in a variety of contexts, to offer meaningful evidence on consumers’ ability to make decisions in relation to funerals. Given that the REA was presumably commissioned because of the insight that decision-making is context dependent, it is surprising to find that it relies on findings from other contexts – without explaining precisely why these other contexts would result in similar decision-making processes to the funerals market. For example, grief in a context of organ donation may not affect individuals in the same way as grief in a funerals context.
- (c) Of the 12 papers listed as being relevant to bereavement, only 3 have a sample size of over 100 (one of which is based on 180 photos of cemetery gravesites, rather than interviews with participants), and some have sample sizes as low as 10. The ‘transferable’ papers are based on sample sizes as low as 6.<sup>5</sup> The statistical

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<sup>5</sup> This refers to the Oleson et al. (2015) study sample size of 6, correcting for typo in REA Table 2 which states 11.

significance (and thus reliability) of the cited literature was not assessed in the REA, and does not provide a robust evidence base on which to make policy.

- (d) Only 2 of the papers listed as being relevant to bereavement focus on the UK. Again, given the context-dependent nature of decision-making, it is surprising that the REA does not explain why any of the other papers are relevant to UK consumers in the UK funerals market.

### *Statistical reliability of the literature*

- 3.3 We note the low level of statistical reliability contained in the sample of selected papers. This is illustrated in the table below, which uses the descriptions of the sample detailed in the REA (Table 2) to explore how relevant the papers are for the UK funerals market. Even when taken in the round, the median sample size of all 39 papers is only 33 participants (the mean average is higher at 114 participants). The lowest sample size in the sample of papers is 6 participants.

				Paper relates to the UK?	
				Yes	No
Paper relates to bereavement?	Yes	Paper relates to funerals?	Yes	No papers	5 papers, median sample size of 56
		No	2 papers, median sample size of 19	4 papers, median sample size of 26	
	No ('transferable')		7 papers, median sample size of 48	19 papers, median sample size of 29	

*Note: excluding Drenten et al. (2017) as this is based on 180 photos rather than interviews/surveys and Joseph Rowntree Foundation (2017) which the REA Table 2 lists as a sample of 266 papers, rather than interviews/surveys. Note the McQuaid (2013) sample size of 56 (correcting for typo in REA Table 2 which states 46). Note the Oleson et al. (2015) sample size of 6 (correcting for typo in REA Table 2 which states 11).*

- 3.4 A low sample size does not mean that a paper is necessarily incorrect, but it does mean that the statistical significance of the findings is likely to be low. Most of the papers in the REA are likely to have low statistical reliability. This problem is particularly acute given that most of the papers are listed in the REA as 'transferable', meaning that they are not about decision-making in a funerals context.
- 3.5 Even where a paper does relate to the funerals market, the findings should be presented carefully and reflect nuance, which is not always the case in the REA. For example, the REA cites McQuaid (2013), a PhD thesis (i.e. not published in a peer-reviewed journal) based on 56 interviews with funeral directors and consumers in Massachusetts, stating that it found that 'consumers were unaware of how to go about arranging a funeral, unable to 'assess the competence' of the funeral director to deliver appropriate services, or to infer trustworthiness.'<sup>6</sup> However, McQuaid (2013) presents a more nuanced view over how uncertainty affects consumers in the funerals market. For example, the paper states that: 'Given this situation, it

<sup>6</sup> McQuaid, J., (2013), Mortuaries, markets, and meaning: the social context of funeral expenditures, Doctoral dissertation, p210.

would be easy to conclude that funeral consumers face a great deal of uncertainty, and, as critics of the funeral industry argue, that they are vulnerable to the manipulations of opportunistic funeral directors [...], **however, such a conclusion would be premature.**<sup>7</sup> (Emphasis added).

#### The reliance on 'transferable' literature

- 3.6 First, decision-making is likely to be context-dependent, which is why decision-making in the funerals context could differ from decision-making in other markets. However, the REA relies on literature which does not review the funerals context, with 34 of the 39 papers relating instead to decision-making in other contexts including end of life care, organ donation, and financial planning. While grief (either anticipated or realised) may be a common factor in these other contexts, the REA does not explain why grief would have the same effect in different contexts. The REA lacks an assessment of how the various decision circumstances described in the transferable papers are similar to the funeral decision circumstances.
- 3.7 Second, this leads to contradictions (a) between the findings of the REA and the findings of the CMA's other research, or (b) between papers cited in the REA. For example:
- (a) The REA considers that the family of the deceased making a decision on organ donation are in a similar emotional/mental state to that of someone arranging a funeral. Literature on organ donation found that family of the deceased would take mental 'short-cuts', with only the most relevant factors considered. In the case of organ donation, this meant that bereaved family would often ignore the wishes and wants of their relative who had died.<sup>8</sup> The factors individuals consider in organ donation decision-making are directly opposed to the factors considered by funerals arrangers as found by the CMA's own qualitative market research.<sup>9</sup> As highlighted in the PDR the consumer research found that *'the most important factor for all respondents in making funeral arrangements was the wishes of the deceased, where these were known: 'the need to follow the wishes of the deceased was universally respected, without question'*.<sup>10</sup> Such contrast in the decision making process between organ donation and funeral arrangement makes it questionable whether individuals in these different situations are indeed in comparable mental/emotional states.
  - (b) A survey of individuals having to make decisions on behalf of a loved one found that they experienced high levels of anxiety. The main effect found was that high levels of anxiety often led to relatives trying to avoid decision making, for example by delaying the decision.<sup>11</sup> This is contrary to the decision-making process suggested by the evidence in the CMA Market Investigation consumer survey and highlighted in the PDR that indicates that consumers tend to make decisions rapidly.<sup>12</sup>
  - (c) Evidence presented on decision-making in organ donation suggests the importance of heuristics.<sup>13</sup> However, in the context of welfare services, the paper by Baxter and

<sup>7</sup> McQuaid, J., (2013), *Mortuaries, markets, and meaning: the social context of funeral expenditures*, Doctoral dissertation, p78.

<sup>8</sup> NatCen (2020), *Rapid Evidence Assessment*, para 5.5.

<sup>9</sup> CMA (2020), *'Market Study Consumer Research'*, para 4.1.1.

<sup>10</sup> CMA (2020), *'Provisional Decision Report'*, para 3.24; CMA (2020), *'Market Study consumer research'*, para 4.1.1.

<sup>11</sup> Dionne-Odom, J., Willis, G., Bakitas M, Crandall B, Grace, P. (2015), 'Conceptualizing surrogate decision making at end of life in the intensive care unit using cognitive task analysis', *Nurs Outlook*. 63:3, pp. 331-340; Baxter, K. and Glendinning, C. (2013), 'The role of emotions in the process of making choices about welfare services: the experiences of disabled people in England', *Social Policy and Society*, 12:3, p. 445.

<sup>12</sup> CMA (2020), *'Provisional Decision Report'*, table 6.

<sup>13</sup> López, J. et al. (2018), 'Bereaved relatives' decision about deceased organ donation: An integrated psycho-social study conducted in Spain', *Social Science & Medicine*, 205, pp. 37-47.

Glendinning (2013) referred to in the REA finds no evidence of the use of heuristics in the process of making choices.<sup>14</sup>

#### *The role of mental short-cuts*

- 3.8 The REA cites literature stating that decisions are subject to mental short cuts (called 'heuristics' in the academic literature). This is unsurprising given that consumers process large amounts of information and have to make many decisions with limited amounts of time. Mental short cuts simplify decision-making and can be described as an effective way of rationing our limited available mental effort. The presence of mental short cuts does not indicate the presence of consumer harm – rather, it indicates the presence of consumers.
- 3.9 Therefore, the case for consumer harm would rely on the finding that the particular mental shortcuts being used lead to poor consumer outcomes. This case is not made by the literature in the REA. Indeed, consumers are satisfied with the services provided by funeral directors (see paras 7.64-7.66 of the PDR). Furthermore, Baxter and Glendinning (2013) point out that academic literature has found that the use of heuristics, which may be relied on to greater extent in the case of negative emotions, may help complex decision making by focussing on the most important attribute.<sup>15</sup>

#### *Interventions to mitigate deficits in decision-making capacity and purchasing behaviour*

- 3.10 The REA considers what interventions may be appropriate to help funeral consumer decision-making based on interventions cited in the literature. Most of the interventions identified are aimed at providing more support to consumers in their decision making process. The REA can find no support in the literature for intrusive remedies, such as price regulation.
- 3.11 We also note that the REA cites McQuaid (2013) in relation to US funeral regulation (the 'Funeral Rule'), suggesting McQuaid considers that wholly disaggregated price lists aid consumer access to price information. However, this misrepresents McQuaid (2013) which actually concludes that the Funeral Rule is '*chief among ineffective public policies*'.<sup>16</sup> The reasons why the Funeral Rule was ineffective are explored in Oxera (2018), which concludes that '*The key lesson from the FTC Funeral Rule is therefore that more information is not necessarily beneficial to clients, and that disclosure must be carefully designed*'.<sup>17</sup>

#### *Summary of a round-table discussion with NatGen and external attendees*

- 3.12 We have serious concerns about this document being introduced as evidence in the Market Investigation. Without amendments, the weight given to this document as evidence should be extremely low. Anecdote and conjecture cannot be sufficient evidence for the CMA.
- (a) The CMA places undue weight on one meeting with a small number of attendees. In addition, the individuals attending the roundtable are not named. It is therefore impossible to evaluate whether they are indeed experts in this field. The number of attendees is also unclear.

<sup>14</sup> Baxter, K. and Glendinning, C. (2013), 'The role of emotions in the process of making choices about welfare services: the experiences of disabled people in England', *Social Policy and Society*, 12:3, p. 445.

<sup>15</sup> Baxter, K. and Glendinning, C. (2013), 'The role of emotions in the process of making choices about welfare services: the experiences of disabled people in England', *Social Policy and Society*, 12:3, p. 441

<sup>16</sup> McQuaid, J., (2013), *Mortuaries, markets, and meaning: the social context of funeral expenditures*, Doctoral dissertation, p. 223

<sup>17</sup> Oxera (2018), 'Disclosure in at-need funerals', section 4.3.



- (b) The roundtable was guided by a slide deck produced by NatCen, following on from the REA (see above). The flaws in the REA therefore also apply to the roundtable.
- (c) The document contains a large number of hypotheses and anecdote which are not substantiated with data or any other kind of evidence.
- (d) The document does not list a single source other than the REA. It is therefore impossible for others to check factual claims.
- (e) The CMA selectively quotes from this document in the Provisional Decision Report, ignoring statements which undercut the CMA's narrative (see detailed comments below).
- (f) In any case, many of the statements made in the roundtable serve more to undercut the REA than support it. The roundtable does not act as supportive evidence, instead pointing out areas of nuance missed in the REA (see detailed comments below).

3.13 Further to the above, we have the following detailed comments. The critique that no sources of supportive evidence are provided should be applied to all paragraphs that we do not specifically comment on.

- (a) Paragraphs 10 and 11 undercut the findings of the REA, pointing out that it is overly simplistic and does not reflect the variation in how grief affects people, or the way in which families actually make decisions over funeral director and funeral package.
- (b) Paragraph 14 undercuts the findings of the REA, pointing out that many consumers have past experience of arranging a funeral.
- (c) Paragraphs 15-19 present no sources of supportive evidence for these claims. As such, these statements cannot be given any weight as evidence.
- (d) Paragraphs 20-21 present a mixed view over the importance of past experience in buying a funeral, and how helpful this past experience is for consumers. However, no sources of supportive evidence are provided for these claims. As such, these statements cannot be given any weight as evidence. Furthermore, we note that consumers are generally satisfied with the service received from funeral directors. Evidence for this can be found in paras 7.64-7.66 of the Provisional Decision Report.
- (e) Paragraphs 25-29 discuss the role of training and enforcement mechanisms. Co-op supports the creation of a regulatory regime for quality of service that would include training requirements and an enforcement mechanism.
- (f) Paragraph 35 includes the statement: '*However, another attendee noted that 99 per cent of the people they had supported had no idea what their choices were*'. This appears to be a figure of speech, rather than the result of any data analysis, and should be caveated as such in the document.
- (g) Paragraphs 43-44 offer statements on the role of the funeral director in decision-making. For example: '*Some people passed their decision making to the funeral director, because they did not want that responsibility*' (para 43), however, there is no sources of supportive evidence for these claims. As such, these statements cannot be given any weight as evidence.

*Summary of meeting with Kate Woodthorpe*

- 3.14 We have serious concerns about this document being introduced as evidence in the Market Investigation. Without amendments, the weight given to this document as evidence should be extremely low. Anecdote and conjecture cannot be sufficient evidence for the CMA.
- (a) This document contains a large number of hypotheses and anecdote which are not substantiated with data or any other kind of evidence.
  - (b) This document does not list a single source. It is therefore impossible for others to check factual claims.
  - (c) This document does not give a single data-point or statistic to support the factual claims within.
  - (d) The CMA selectively quotes from this document in the PDR, ignoring statements which undercut the CMA's narrative (see detailed comments below).
  - (e) The interview quoted is now over one year old (25 July 2019), and therefore cannot fully reflect market trends. For example, it was conducted before the Covid-19 pandemic. We are keen to understand why this evidence was not released by the CMA at an earlier stage in the investigation.
- 3.15 Further to the above, we have the following detailed comments. The critique that no sources of supportive evidence are provided should be applied to all paragraphs that we do not specifically comment on.
- 3.16 Regarding the time-sensitivity of funerals (paras 3-4), the document does not recognise (a) that families may prefer less time between death and funeral; or (b) the religious and cultural factors that often require funerals to be held a short period of time after death. The statement '*So it is not time pressured.*' (para 4) is simplistic and incorrect.
- 3.17 Paragraph 5 states that funerals have become 'commodities', without any supportive evidence for these claims. As such, these statements cannot be given any weight as evidence. As we set out at 2.6 above, funerals are anything but 'commodities' and we believe that the CMA's misunderstanding of the nature of funerals has led it to this erroneous categorisation. Evidence for the growing personalisation of funerals can be found in paras 3.159-3.166 of the PDR.
- 3.18 Regarding the role of funeral directors (paras 7-8), the document notes that: '*There is asymmetrical competency, a mismatch between the consumer and the provider at the point of purchase.*' (para 7). This statement lacks the context, as this description could arguably apply to almost all transactions and is not an indication of a market failure or consumer detriment.
- 3.19 The following statement: '*With that came a position of power.*' (para 8) again lacks context and analytical rigour. First, the term 'power' is undefined and appears to be distinct from 'market power' (due to the lack of any economic analysis). The CMA should focus on economic analysis of market power, rather than anecdotal analysis of something ill-defined. Second, in any case this description again could arguably apply to almost all transactions. Third, any such 'power' is moderated through market dynamics (e.g. competition between providers). Therefore, 'power' on the part of a provider is not an indication of a market failure or consumer detriment.
- 3.20 Paragraph 9 states that research supports the CMA's own conclusions that consumers did not use the internet or shop around, but no sources are given for these findings. As such, these statements cannot be given any weight as evidence.

- 3.21 The first sentence of paragraph 12 undercuts the CMA's whole narrative in the PDR: '*The narrative that the bereaved were vulnerable, irrational and unable to make decisions and were potential victims of greedy, manipulative funeral directors was made without much evidence and was too simplistic.*' Furthermore, paragraph 12 states that: '*There wasn't the evidence to show bereaved people were so compromised by grief.*' If the CMA is to use this document as evidence in the Market Investigation, it should quote these statements in the Provisional Decision Report.
- 3.22 Paragraph 14 undercuts the narrative that grief removes the ability to make good decisions over funeral director and choice of funeral, as it may be the '*clearest thinking family member, or person within a network of people*' who takes the responsibility to arrange the funeral. In short, it suggests that there may be a significant proportion of families who are capable of considering and assessing information in arranging a funeral and therefore that a transparency remedy may be sufficient (as opposed to more intrusive remedies).
- 3.23 Paragraph 15 presents an overly simplistic view of the heterogeneity of preferences over funerals. No two funerals are the same, and the geographic distribution of different religious and cultural requirements is nuanced and varied.
- 3.24 Paragraph 16, highlighting the role of negotiation between consumer and funeral director, undercuts para 3.192 of the PDR which states that: '*there is limited (or no) negotiation over options and prices*'. If the CMA is to use this document as evidence in the Market Investigation, it should explain why paragraph 16 is incorrect.
- 3.25 Paragraph 22 presents no sources of supportive evidence for these claims. As such, these statements cannot be given any weight as evidence. Furthermore, it is unclear why a family's preferences for the funeral to occur soon after death should be critiqued in this way, or seen as less valid. Furthermore, the Summary of a round-table discussion with NatCen and external attendees (para 13) states that time limits can be beneficial for some people.
- 3.26 Paragraph 23 presents no sources of supportive evidence for these claims. As such, these statements cannot be given any weight as evidence. Co-op does not book crematoria slots that it does not require.
- 3.27 Regarding mistakes by florists or ministers (para 26), we are of the view that if the service is a third-party cost (e.g. cremation) and the funeral director adds no mark-up to that cost, that the provider of the disbursement should be liable for rectifying the situation. However, in other situations the funeral director may be responsible.
- 3.28 Regarding code of practice and regulation of quality (para 28), Co-op supports the establishment of a regulatory regime focussed on ensuring quality standards are met across the whole industry.
- 3.29 Paragraph 32 presents no sources of supportive evidence for the claims that are made. As such, these statements cannot be given any weight as evidence. Furthermore, this anecdote and conjecture cannot be used by the CMA as a substitute for proper economic analysis of the funerals market. For example, paragraph 32 states that: '*there was a potential for conflict between what was in the consumers' best interest and what was in funeral directors' best interests since the latter were commercial organisations*'. First, this is clearly the case in almost all markets where businesses provide goods or services to consumers. Second, the identification of commercial interests is not sufficient to demonstrate a market failure or consumer detriment.

- 3.30 Paragraph 34 presents no sources of supportive evidence for the claims that are made. As such, these statements cannot be given any weight as evidence. Co-op places great importance on staff training<sup>18</sup>.

### **How people choose a funeral (3.1-3.193)**

#### *Circumstances of death and contextual factors (3.6-3.90)*

- 3.31 Paragraph 3.46 cites Bern-Klug et al. (1999) in stating that over 70 tasks must be completed after death according to 'a local cemetery owner'.<sup>19</sup> However, the CMA does not state that this cemetery owner is based in Kansas City (Kansas City Catholic Cemeteries), and who apparently gave their opinion in May 1997. More generally, it is unclear why a 21 year old paper based on analysis of funerals in Kansas City is relevant evidence in this Market Investigation (e.g. the REA excludes papers over 20 years old).
- 3.32 Paragraph 3.47 cites the interview with Dr Kate Woodthorpe (para 18) regarding the financial circumstances of the bereaved. For the reasons stated above, the weight given to this document as evidence should be extremely low. For example, no sources, no evidence, and no data are given in support of these statements. It is unclear whether the issues identified in paragraph 3.47 are widespread or not.
- 3.33 Paragraph 3.50 cites McQuaid (2013), without detailing the full nuance of the paper (for the reasons described above).
- 3.34 Paragraphs 3.58(a) and 3.58(b) quote the roundtable discussion with NatCen and external attendees (para 23) regarding limited consumer choice of funeral director. For the reasons stated above, the weight given to this document as evidence should be extremely low. For example, no sources, no evidence, and no data are given in support of these statements.
- 3.35 Paragraphs 3.69-3.76 include evidence that consumer behaviour is in fact '*often driven by rational customer preference and informed decision-making*' (para 3.71). The CMA concludes that '*People organising a funeral are emotionally vulnerable to varying degrees.*' (para 3.76). However, the CMA does not come to a view over the proportion of people who are 'vulnerable' or 'not vulnerable'. While even those who are not vulnerable may still be subject to external pressures, the CMA has not demonstrated that this amounts to poor outcomes for those consumers.
- 3.36 Paragraph 3.77 includes evidence reported in the REA stating that there is an overarching consensus that the psychological effects of grief or bereavement make it challenging for consumers to make informed decisions. However, as noted above, the REA only reviews 12 papers relating to bereavement, only 5 of which relate to a funerals context, and the average sample size of these papers is very low. Low weight should therefore be placed on the findings of the REA.
- 3.37 Paragraph 3.80 cites evidence reported in the REA from literature on organ donation. As stated above, findings in other markets are at odds with findings in the funeral market and decision making-processes are contextual and therefore not always directly comparable.

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<sup>18</sup> see Co-op (2019) Non-price submission, para 2.10 and Co-op (2020), 'Response to Working Paper on Regulation Remedies', para 4.7-4.14

<sup>19</sup> Bern-Klug, M., Ekerdt, DJ. and Wilkinson, DS. (1999). What families know about funeral costs. Health and Social Work, 24(2).

- 3.38 Paragraph 3.90 the CMA concludes that most people are unlikely to exercise good commercial judgment. It is unclear what exactly the CMA understand 'good commercial judgment' to mean and how this is assessed.

*How this translates into the approach taken by consumers (3.91 – 3.150)*

- 3.39 In paragraphs 3.92, 3.93, 3.104 and 3.106, the CMA includes evidence from academic papers and the REA stating that bereaved individuals or individuals in a comparable mental state employ mental short-cuts to make decisions. As stated above, the use of mental short-cuts is used by consumers in all markets. The presence of mental short cuts does not indicate the presence of consumer harm – rather, it simply indicates the presence of consumers. The CMA goes on to list the preferred 'short-cuts' by participants, namely: relying on previous experience with a funeral director, taking a recommendation from a friend, or basing their choice on brand reputation (para 3.106). Taken alone, these shortcuts are not evidence of a market failure.
- 3.40 Paragraphs 3.94 and 3.112 cite the interview with Dr Kate Woodthorpe (para 9) as supportive evidence for the hypothesis that proximity is the most important factor in choosing a funeral director. For the reasons stated above, the weight given to this document as evidence should be extremely low – e.g. no data or source of any kind is provided in the interview to support the statements about proximity.
- 3.41 Paragraph 3.117 cites the interview with Dr Kate Woodthorpe (para 10) as evidence that people wish to defer to others to make decisions. For the reasons stated above, the weight given to this document as evidence should be extremely low – e.g. no data or source of any kind is provided in the interview to support the statements about deferring to others.
- 3.42 Paragraph 3.132 cites the interview with Dr Kate Woodthorpe (para 19) as evidence that people '*tend to define their satisfaction on emotional grounds*'. For the reasons stated above, the weight given to this document as evidence should be extremely low – e.g. no data or source of any kind is provided in the interview to support the statements about defining satisfaction.
- 3.43 Paragraph 3.137 includes evidence from the Market Investigation consumer survey stating that information received as part of a recommendation tends to be practical rather than specific information related to the offering. The CMA go on to conclude that this shows that people rely on short-cuts rather than taking active steps to assess quality. However, the Market Investigation consumer survey also indicates that the expected level of customer care, the level of quality, option of personalisation, capability of meeting specific religious requirements and level of care for the deceased were cited as the most important part of a recommendation that led to the choice of funeral director.<sup>20</sup> In addition, 10% (7 out of 68 respondents) indicated that they considered the cost component (value for money or price) as the most important reasons for going with the recommendation.<sup>21</sup>

*Changing customer dynamics (3.151 – 3.185)*

- 3.44 The section of the PDR relating to changing customer dynamics highlights how the funerals market in the UK is rapidly evolving. However, instead of taking these dynamics into account in market analysis and remedy design, these dynamics are then put to one side for the rest of the Provisional Decision Report. We strongly disagree with the CMA's decision to largely ignore this clear evidence of market developments when making its provisional decision.

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<sup>20</sup> CMA (2020), 'Market Investigation Consumer survey', Table 6.

<sup>21</sup> CMA (2020), 'Market Investigation Consumer survey', Table 6.

- 3.45 Furthermore, the high level of uncertainty recognised by the CMA regarding the implications of Covid-19 should be a reason to caveat all the CMA's analysis of consumer behaviour (e.g. analysis of data before a major shock to the funerals market and consumer behaviour across the whole economy).

*Provisional conclusions on how people choose a funeral (3.186-3.193)*

- 3.46 The statements made in paragraphs 3.186-3.193 fail to recognise the nuance in the literature, the limitations of the evidence base, and the high degree of uncertainty about consumer behaviour due to the Covid-19 pandemic.
- 3.47 Overall, the CMA's assessment of consumer behaviour in section 3 fails to draw the link between observed behaviour and consumer outcomes. As the CMA notes in paras 7.64-7.66 of the Provisional Decision Report, consumers are generally satisfied with the service they receive from funeral directors.
- 3.48 The CMA emphasises (para 3.186) that consumers tend to rely on previous experience or recommendations to decide on a funeral director. The CMA has not assessed what the effect of this decision-making process is in terms of consumer outcomes. For example, the results from its Market Investigation consumer survey results show that 46% of individuals had recommended a funeral for specific quality reasons, such as the level of customer care provided, level of quality provided and/or the level of care for the deceased.<sup>22</sup> As such it is not clear that using previous experience and recommendation as a proxy for quality does not qualify as informed decision-making.

*How funeral directors compete: Customers' approach to choosing a funeral director (5.5-5.17)*

- 3.49 Paragraphs 5.5-5.17 of the PDR are not forward-looking; they do not consider the impact of the on-going trends in the market, and evolving changes in consumer demand. These trends are acknowledged in paragraphs 3.151-3.185 of the PDR, and include increasing use of the internet, secularisation and personalisation. Furthermore, paragraphs 5.5-5.17 of the PDR do not consider the impact of Covid-19 on customer behaviour. The long term trends, combined with the sudden shock to consumer behaviour (the Covid-19 pandemic), means that the analysis of customer behaviour in paragraphs 3.151-3.185 is incomplete, and at risk of being immediately outdated.

*How funeral directors compete: The role of the funeral director in shaping customer choice of funeral (5.18 – 5.30)*

- 3.50 There is a tension in paragraph 5.21 of the PDR where the CMA criticises a lack of information available to customers, yet acknowledges the outcome of the consumer survey: *'nearly all respondents to the Market Investigation consumer survey felt they had received the right amount of information about funeral options and costs and at the right time'*.<sup>23</sup> It seems that this positive evidence of market success has been dismissed by the CMA in the PDR, rather than being accepted and acknowledged as a strong indicator that funeral directors are doing an excellent job balancing customers' need to understand pricing without overloading them at an extremely difficult and emotional time. The consumer survey results underline our view that time and again, customers acknowledge that they are very happy with the services provided by funeral directors.

<sup>22</sup> CMA (2020), 'Market Investigation Consumer survey', Table 20.

<sup>23</sup> CMA (2020), 'Provisional Decision Report', para 5.16.

3.51 Paragraphs 5.18 – 5.30 of the PDR conclude as follows:

*'The above indicates that funeral directors play a very important role in shaping customer decision-making. This may reflect the funeral director attempting to use their own experience and personal values to deliver the products and services they perceive (rightly or wrongly) are likely to best meet the customer's preferences. However, there is also potential scope for conflicting incentives acting on funeral directors, balancing a professional role to support and guide the bereaved in their choices between the many different funeral options available against business and financial incentives to maximise their revenues and/or profits, and/or for the former to be used to rationalise the pursuit of the latter, even unintentionally. Regardless of what the funeral director's motivations are, it appears likely that the outcomes delivered by the funeral director (in terms of quality, price etc) reflect their own judgement as to these potential trade-offs (between meeting the customer's preferences and their own incentives), rather than necessarily those determined by competitive forces (as further discussed in the following sections).'*' (para 5.30).

3.52 First, we note that the apparent '*conflicting incentives acting on funeral directors*' could arguably describe almost any market, where businesses sell goods or services to consumers. The CMA's finding that funeral directors face incentives to maximise revenue or profit is not evidence of a market failure.

3.53 Second, it is regrettable that the CMA has chosen to portray negatively what is in fact funeral directors' primary responsibility, i.e. to support and guide customers who cannot easily articulate what they want. We feel that this is not something that should be criticised; rather it is what customers actually need at an extremely difficult and emotional time.

3.54 Third, whether there is a market failure relates to whether competitive forces incentivise providers to deliver good consumer outcomes. In the case of funeral directors, such competitive forces are indeed active and lead those funeral directors to use their expertise to guide customers in a way that would serve those customers well and ultimately lead to personal recommendations. For example, the role of personal recommendations in consumer choice creates a feedback loop for funeral directors. For example, in para 3.98, the CMA states that: '*Over one in four found out about the funeral director they used through a recommendation from a personal contact, and one in five did so through local knowledge/word-of-mouth.*' Thus, treating one customer poorly would reduce the likelihood of personal recommendation, reducing future revenues/profitability. Therefore the incentive to maximise revenues/profit is not contrary to the provision of good consumer outcomes in the funerals market.

3.55 Fourth, the phrasing of para 5.30 appears to lean heavily on paragraph 32 of the Summary of meeting with Kate Woodthorpe. As noted above, paragraph 32 of the Summary of meeting with Kate Woodthorpe lacks any supporting evidence, such as data or sources. It is concerning that unsubstantiated minutes of a single meeting from July 2019 appears to be carrying significant weight in the CMA's market analysis.

#### **4 Response to Section 5 of the PDR: How funeral directors compete**

##### *Introduction*

4.1 In this section 4, we respond to the key elements of section 5 of the PDR which materially understates the level of competition between funeral directors (on price and non-price factors), the long-term decline in our national market share and steps we have taken to address it. We discuss the impact on competition from Simple funerals and Direct Cremation which we consider the CMA has failed to recognise in the PDR.

*Competition, entry and performance (5.82-5.93)*

- 4.2 We strongly disagree with the CMA's conclusion that competition between funeral directors is muted.<sup>24</sup> As explained to the CMA in previous submissions, we have seen significant changes in the market over recent years with customers being responsive to price and quality changes, increased availability of cheaper alternatives, a large number of new entrants and increased use of online price comparison engines. We also opened new homes to respond to new competition. Due to the importance of recommendations in customer decision making, and the infrequent nature of the purchase, these effects can take longer to manifest themselves. Therefore, any analysis of competition should examine effects beyond the short term.

*Incorrect conclusion on competing on the price dimension*

- 4.3 After assessing various competition dimensions and firms' competitive responses to changes in performance<sup>25</sup>, the CMA concluded that the most common reaction to competition from rivals is to increase marketing activity with 'relatively little pricing or quality response'. We notice that the CMA has put a strong emphasis on the price dimension despite the evidence showing that non-price dimensions are considered to be important for consumers. As stated in the PDR (paras 5.82–5), price plays a limited role in customer decision-making. The CMA's Market Investigation Consumer Survey Results states that the most important factors are previous personal experience (reported by 26% of respondents), good reputation (11%) and personal recommendation (11%); whereas value for money and prices were far less important (3% and 2% respectively of respondents reported these as important factors)<sup>26</sup>. As is acknowledged in paragraphs 5.28 and 5.30 of the PDR, funeral directors play a very important role supporting and guiding customers who cannot easily articulate what they want. We feel that this is not something that should be criticised; rather it is what customers actually need at an extremely difficult and emotional time and consistent with a response to competitive pressures.
- 4.4 The CMA concludes that funeral directors' *'approach to pricing has, however, become somewhat more responsive to competitors' activities in more recent years'*. We consider that this significantly understates the changes we have seen in terms of increased market competitiveness over time. We also consider that this direction of travel towards increased competition should receive more weight in CMA's characterisation of the market;<sup>27</sup> while the CMA acknowledges Co-op's significant price reaction to competition from Fosters in Scotland, it fails to give appropriate weight to Co-op's low-cost propositions (Simple funerals and CWC) which have been pioneered and developed in order to remain competitive.<sup>28</sup> Recognising the need to respond to declining market share, Co-op has taken substantial additional actions on the price dimension:<sup>29</sup>
- (a) the inclusion of a new price band, which adds flexibility and reflects local competitive conditions;
  - (b) the introduction of a 'Guaranteed to Beat' offer in September 2018 (changed to 'Price Match' following our price trials in 2019-20);

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<sup>24</sup> CMA (2020), 'Provisional Decision Report', para. 9.

<sup>25</sup> CMA (2020), 'Provisional Decision Report', paras 5.82–5.93.

<sup>26</sup> CMA (2020), 'Customer Survey Results', paras 40-41.

<sup>27</sup> CMA (2020), 'Annex H of Provisional Decision Report: Qualitative Evidence from Funeral Directors on Competition', para 122a.

<sup>28</sup> Co-op (2020), 'Response to the Working Paper on Company-level price and market share analysis', para. 2.15.

<sup>29</sup> CMA (2020), 'Provisional Decision Report', para. 5.84 and Appendix H paras 32 to 59 and 104 to 122.



- (c) the use of discounts for Co-op members of £100 or 5% (whichever is greater) when they arrange a funeral or buy a funeral plan which is a fundamental part of our pricing model with approximately a third of our customers as members<sup>30</sup>;
- (d) the recent price trials that Co-op has launched were mainly driven by local competition from independent funeral directors as mentioned in the response to the Working Paper on 'Competition between funeral directors' on 2 June 2020<sup>31</sup>; and
- (e) the price reduction for simple funerals in England and Wales in September 2018 (in addition to even larger ones in Scotland) as well as maintaining the standard funeral prices since May 2017. Moreover, since the start of the Covid-19 pandemic we have fully absorbed increased costs including additional staff, increased cost of storage of deceased (from increased time in care due to reduced cremation/burial availability and by families delaying funerals while they waited for restrictions to be eased) and the cost of personal protection equipment ('PPE'). In other industries such cost increases have been passed to customers.

4.5 While we agree with the evidence found by the CMA that significant price reductions have had a material positive effect on volumes and shares, we do not accept that other factors do not significantly affect performance especially in a market where reputation and recommendations are very important to consumers.<sup>32</sup>

*Incorrect interpretation of Co-op long-term decline in national market share*

4.6 It is surprising and wholly inconsistent that the CMA concludes funeral directors are not penalised for high prices by customers in the funeral market while accepting elsewhere in the PDR that the long-term decline in Co-op and Dignity market shares may have been due to the long term effect of price increases.<sup>33</sup>

4.7 The evolution of Co-op market share provides strong evidence of competition in the market. The demand for funerals is relatively stable over time which means that customers have moved away from Co-op and are being served by other funeral directors. Moreover, because simple funeral volumes and redemptions of pre-paid plans have increased over time it means the lost market share was due entirely to standard funeral volumes decreasing year on year. The CMA failed to acknowledge that this reduction in Co-op's market share is evidence of two types of substitution in the market:

- (a) Firstly, customers have been switching to other funeral directors. These could be:
  - (i) pre-existing or new funeral directors perceived by customers to have a better proposition for standard funerals; and
  - (ii) pre-existing funeral directors or new entrants in the market with a low-cost proposition that better matches customers' demands ([X]). As previously submitted to the CMA, in 2019, 86.5% of the 363 new non-Co-op entrants for the past 5 years were still active in the market, demonstrating that entry was successful and resulted in sustained increases in competition.<sup>34</sup>

<sup>30</sup> Co-op (2020), 'Response to the working paper on 'Competition between funeral directors', para. 22; Co-op membership webpage: <https://www.coop.co.uk/funeralcare/membership>.

<sup>31</sup> Co-op (2020), 'Response to the Working Paper on Competition between funeral directors', para. 14.

<sup>32</sup> CMA (2020), 'Provisional Decision Report', para 5.86.

<sup>33</sup> CMA (2020), 'Provisional Decision Report', para 5.173.

<sup>34</sup> Co-op (2020), 'Response to the Working Paper on Company-level price and market share analysis', para. 2.6.

- (b) Secondly, customers have been switching to low-cost propositions provided by Co-op. The share of low cost funerals has increased from less than [5-10%] in 2013 to [20-30%] in March 2020 (before Covid-19) and to [50-60%] in May 2020 (during the Covid-19 peak).
- 4.8 While Co-op does not have access to sufficient information to analyse the magnitude of these two effects separately, it can infer that both are present to some degree since its overall at-need market share has been decreasing and its volume of simple funerals have been increasing as presented in the econometric analysis submitted in June 2020.<sup>35</sup> Moreover, the trend of decreasing market shares has persisted despite Co-op's strategies to reverse the decline.<sup>36</sup>
- 4.9 The CMA considers the lag between the '*two Largest funeral directors observing a deterioration in volumes and market shares (...) and attempting to address this through improving their competitive offering*' as relevant evidence of muted competition.<sup>37</sup> In our view, the CMA fails to appropriately take into account that:
- (a) our actions in response to negative performance had to be delivered within our business model adopted at the time. As previously submitted, we acknowledge that this comes with some degree of inflexibility but the CMA should not overlook the benefits for consumers of having a national business model. For example, the national business model ensures customers receive a consistent level of quality across the entire network and provides flexibility and portability across the UK when redeeming pre-paid plans where customers know what product they are buying and have the confidence to know they will receive it wherever they live at the time of redemption; and
- (b) our analysis of the reasons for the loss of market share leads to non-price responses as well. As part of this analysis, we found that part of the reason why we lost market share was the lack of low-cost options to meet the needs of certain customers which meant customers were switching to other funeral directors. This led to a competitive response in 2016 with the relaunch of simple funerals and in 2018 with the introduction of Cremation without Ceremony.
- 4.10 The CMA's analysis of market shares presented in Annex J suffers from the limitations highlighted in our response to the 'Working Paper on Company-level price and market share analysis' and it cannot be relied on as a method to investigate the effect of a funeral director's price changes on its performance since it does not control for any other changes in the market (such as increases in quality, changes in costs or competitors). Below we highlight the main issues with adopting this methodology and why it is inappropriate:
- (a) First, national market shares as a metric for competitive success is inappropriate in the context of a market where competition is highly local and heterogeneous.<sup>38</sup> Co-op has provided evidence to the CMA that market shares vary significantly, not only across different regions, but also over time (e.g. because of local factors such as the variability in competitive pressures across regions). Given this heterogeneity, a simple before-and-after comparison of national market share averages is likely to be inaccurate and

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<sup>35</sup> Oxera (2020), 'Econometric analysis of substitution between funeral packages', section: Sources of underestimation of the magnitude of coefficients.

<sup>36</sup> Co-op (2020) Response to the Working Paper on Company-level price and market share analysis, para 2.18.

<sup>37</sup> CMA (2020), 'Provisional Decision Report', para. 5.87.

<sup>38</sup> Co-op (2020), 'Response to the Working Paper on Company-level price and market share analysis', para 1.7.

cannot therefore provide reliable insights into the competitive dynamics that it seeks to explain.<sup>39</sup>

- (b) Second, the lack of change in market shares in the short term due to competitive pressure is mixed with the effect of expansion in areas where Co-op was not previously active. The majority of homes opened by Co-op as part of its expansion were in areas where Co-op was not previously active. Specifically, we showed that 63% of new funeral homes opened between 2013-18 did not have any pre-existing Co-op funeral homes within their 80% catchment area, and 20% had only one other Co-op funeral home within their 80% catchment area. It is therefore clear that a significant proportion of the extra volumes generated by new homes were incremental. Co-op's loss in national share is therefore worse than the headline market share figures suggest and is driven to a significant extent by business lost to competitors.<sup>40</sup> The CMA has ignored the evidence that these new openings bringing in incremental volume were part of a wider strategy to maintain share in the face of growing competitive challenges.

#### *Reaction to competitors' actions*

- 4.11 We consider that the CMA has unduly downplayed the evidence gathered on funeral directors' reaction to entry to conclude that funeral directors are aware of entry but their response is delayed or muted.<sup>41</sup>
- 4.12 Increased marketing is a localised action that benefits consumers. By increasing visibility at the local level, customers receive information from multiple channels and increase their choice set of funeral directors beyond those heard from recommendations. Depending on the type of marketing, consumers will also benefit from additional information about prices and the different types of services available.
- 4.13 The CMA should not dismiss the evidence of increased marketing as it shows that funeral directors are responding to entry and they consider this to be a worthwhile defence mechanism.

#### **Implications of growth in low-cost options (5.100-5.126, 5.125-5.142)**

##### *Low-cost simple volumes*

- 4.14 We strongly disagree with CMA's conclusion that the qualitative evidence indicates simple funerals are likely to remain 'a relatively small proportion of their total sales of at-need funerals in the next few years'.<sup>42</sup> We do not believe that the CMA's conclusion is a correct interpretation of the evidence and it fails to attach appropriate weight to the important evidence put forward by Co-op in previous submissions.
- 4.15 First, considering that the simple funerals proposition is relatively new on the market, it has had a strong take up rate among the three largest funeral directors. Our proportion of simple funerals in 2018 was [20-30]% ([20-30]% in 2019 due to some simple funerals being replaced by CWC) and as found by the CMA, in 2018, across the three largest funeral directors combined this

<sup>39</sup> Co-op (2020), 'Response to the Working Paper on Company-level price and market share analysis', para 1.7, 2.27 and Tables 4 and 5.

<sup>40</sup> Co-op (2020), 'Response to the Working Paper on Company-level price and market share analysis', para. 2.12, based on Co-op (2019), 'Response to CMA's request for information' dated 31 July 2019, Annex B, Question 13. The total number of openings of new Co-op funeral homes between 2013 and 2018 was 195. The figures reported in this response are based on a sample of 185, as those were the funeral homes for which we had the most complete information on the location of the deceased, which is used to calculate catchment areas.

<sup>41</sup> CMA (2020), 'Provisional Decision Report', para 5.99.

<sup>42</sup> CMA (2020), 'Provisional Decision Report', para 5.112.

proportion was [20-30]%.<sup>43</sup> The forward looking view based on the number of Co-op pre-need plans sold is that a higher proportion of future funerals will be simple. In 2019, [20-30]% of all pre-need plans were simple funerals.

- 4.16 This increase in the take-up of simple funerals, from a base that was below [5-10]% prior to 2013, is a very significant change to the market and the CMA should recognise it as such. As well as the obvious impact on consumers, who receive an extremely good value product, the rise of low cost funerals has had a large impact on funeral providers, as the margins on low-cost products tend to be sold on very slim profit margins (or are loss-making on a standalone basis).
- 4.17 Second, while the proportion of simple funerals found by the CMA for the smaller funeral directors is around 5-7%, we consider this is likely to be due to lack of transparency on how they present this type of funeral. As mentioned in our previous response, we consider that there is nothing inherent about our typical customers that means a greater proportion of consumers are likely to prefer simple funerals or direct cremations.<sup>44</sup> In addition, as noted by the CMA in the PDR, many smaller funeral directors do not operate a clear distinction between standard and simple products, suggesting that the 5-7% figure quoted severely underestimates the proportion of low-cost funerals offered by smaller funeral directors.<sup>45</sup>
- 4.18 Finally, as mentioned before, we anticipate the effect of the Covid-19 period to affect consumer behaviour going forward and increase the demand for simple funerals.<sup>46</sup> The shift in social norms towards lower-cost funerals can have a long lasting effect and indeed we observe that in 2020 the share of Simple funerals has increased from an average of [10-20]% pre-Covid-19 to an average of [20-30]% for the period July-August 2020 after an average of [40-50]% during the peak of Covid-19 (April- June 2020).
- 4.19 Overall, we consider that the CMA's conclusions on the importance of simple funerals is inconsistent with the evidence it has gathered throughout the Market Investigation, the significant proportion of simple funerals as part of total mix and increasing demand for direct cremation plans. This should be adjusted accordingly in the final report.

#### *The relationship between simple and standard prices*

- 4.20 The CMA states that it expects prices of higher priced options to be '*forced down due to the availability of lower priced options*' when different types of funerals are seen as close substitutes.<sup>47</sup> As previously submitted to the CMA, we consider that simple funerals are seen as substitutes by many customers and we consider this to be a significant constraint on the price of our other options (standard and CWC).
- 4.21 In response to the increased take-up of simple funerals and the shift in the mix of funerals we deliver we decided to maintain our prices of standard funerals fixed since January 2017. In addition, [§<], this amounts to a price decrease for standard funerals in real terms.

#### *Competition between simple funeral providers*

<sup>43</sup> CMA (2020), 'Appendix K: Analysis of Dignity price trials and quantitative submission by Co-op, para 46'

<sup>44</sup> Co-op (2020), 'Response to the Working Paper on Constraint imposed on standard funerals by low-cost options – analysis of internal documents and RFI responses from three largest funeral directors', para 19.

<sup>45</sup> CMA (2020), 'Provisional Decision Report', para 5.104 (b)

<sup>46</sup> Co-op (2020), 'Response to the Working paper on Constraint imposed on standard funerals by low-cost options – analysis of internal documents and RFI responses from three largest funeral directors', para 5.

<sup>47</sup> CMA (2020), 'Provisional Decision Report', para 5.105.

- 4.22 We consider that the CMA has unduly downplayed the evidence of competition between simple funeral providers and should weight more heavily the evidence of increasing market dynamism. Reflecting on the low average revenue per funeral information gathered by the CMA from smaller funeral directors, we consider that some of them provide propositions more similar to Co-op's simple funeral than its standard funeral, which suggests the level of competition for simple funerals is higher. In addition, other large funeral directors have introduced simple funeral propositions in response to our relaunch of simple funerals in 2016 and there is consistent evidence of price competition for this type of funeral.
- 4.23 Consistent with the evidence we have submitted in the past, the CMA concludes that '*there are some indications that reductions in price have been associated with increased take-up of simple funerals among the three Largest funeral directors*'.<sup>48</sup> However, it continues by saying '*most of which has come through increased volumes overall rather than a reduction in their sales of standard products*'. This is a completely illogical conclusion and we are baffled that the CMA has been unable (or unwilling) to correctly interpret simple quantitative evidence provided by Co-op throughout the Market Investigation, showing that Co-op's market share declines have been entirely driven by a very significant reduction in standard volumes, at a time when Simple and redemption volumes were increasing.<sup>49</sup> Moreover, the evidence and analysis in Appendices J and K does not show how it reached this definitive conclusion, which would require disentangling the magnitude of volumes due to switching from other funeral directors to Co-op from volumes due to switching from Co-op standard funerals to simple funerals.<sup>50</sup> Moreover, even if the CMA interpreted the reduction in standard volumes as substitution to other providers, rather than to Co-op's Simple, in the CMA's own words, this would only indicate an even stronger competitive constraint.<sup>51</sup>
- 4.24 Despite the acknowledgement that there is more competition in the provision of simple funerals, the CMA considers that this might not be fully effective because: (a) these customers display the same intrinsic characteristics and psychological vulnerability leading to low levels of shopping around, (b) there was delayed and muted response to price changes by competitors, (c) there is price dispersion between funeral directors for simple funerals, and (d) while list prices decreased, the average revenues have not.<sup>52</sup> We disagree with the CMA's assessment as it has not presented any robust evidence to sustain these points and the conclusion is at odds with Co-op's experience with simple funerals:
- (a) First, since our simple funeral relaunch in January 2016 there have been many changes in the prices offered by competitors, which have led to a high degree of competition in simple funerals. The absence of immediate reaction by competitors should not be read as lack of competitive response as done by the CMA. We also note that the CMA's analysis focuses almost entirely on the three largest providers, and is therefore unable to capture competitive reactions by smaller players, who represent the vast majority of the market, and are generally more nimble and flexible locally.
- (b) Second, as outlined in our previous responses, the price dispersion between funeral directors providing simple funerals is partly due to the differences between the packages offered and should not be read by the CMA as a lack of competition.<sup>53</sup> The

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<sup>48</sup> CMA (2020), 'Provisional Decision Report', para 5.117.

<sup>49</sup> See, for example, Co-op (2020), 'Response to the CMA's Working Paper on the Take-up of Simple funerals'. Also see paras 4.27-4.31 below

<sup>50</sup> CMA (2020), 'Provisional Decision Report', para 5.117

<sup>51</sup> See, for example, statements made by the CMA in the working paper on the Take-up of Simple.

<sup>52</sup> CMA (2020), 'Provisional Decision Report', para 5.118

<sup>53</sup> Co-op (2020), 'Response to Working Paper on price dispersion analysis', para 24 and Table 1.

CMA has not carried out a true like for like comparison and so its conclusions on this point are not supported.

- (c) Third, since our simple funeral list prices decreased in January 2016, the average revenue per funeral has also decreased (contrary to CMA's assessment). Figure 1 below presents the average revenue spend in nominal and real terms over the period 2013-2019. In real terms, it shows that while there has been a price increase between 2013-2015 (with a CAGR of [REDACTED]%) prices have decreased consistently from the end of 2015 to 2019 (with a CAGR of [REDACTED]%).

**Figure 1 Simple funeral ARF, 2013-2019**

[REDACTED]

Note: The prices have been deflated using the RPI index, base = 2013.

Source: Oxera analysis of Co-op data.

*Impact of increased competition from simple funerals on standard funerals*

- 4.25 As noted in our response to the Working Papers, we disagree with the CMA's statement that customers switching to simple funerals (and generally the availability of lower-cost options in the market) is not impacting on the competitiveness of our standard funeral packages/not exerting a constraint.<sup>54</sup>
- 4.26 The CMA has '*examined the extent of substitution between standard and simple funerals and considers, based on the evidence [CMA] have obtained, that simple funerals are not a sufficiently close substitute for standard funerals*' because<sup>55</sup>:
- (a) they are an imperfect substitute addressed to different groups of customers;
  - (b) they account for a small minority of the number of funerals sold; and
  - (c) prices do not follow similar trends and standard funeral prices and/or volumes have not reacted in response to simple funeral price changes.
- 4.27 In our experience there is substitutability between standard and simple funerals when the two options are clearly presented alongside each other. Although we agree that not all customers would be interested in the lower-cost options, increasing transparency by including them in our Funeral Choices brochure led to one fifth of our customers opting for low-cost options by the beginning of 2020. Moreover, the fact that [REDACTED] of our customers have opted for lower-cost options during Covid-19 highlights that these options are substitutes for many customers in at least some circumstances.
- 4.28 In addition, as noted by the CMA in the PDR, many smaller funeral directors do not operate a clear distinction between standard and simple products.<sup>56</sup> This means that the CMA cannot simply dismiss low-cost funerals as a niche product that has no real effect on standard funerals. Products supplied by smaller operators, who supply two thirds of at-need funerals, blur the line between standard and simple. This view is supported by the CMA's own evidence on the low average revenue per funeral for smaller operators, which as we note at paragraph 4.17 above

<sup>54</sup> Co-op (2020), 'Response to Working Paper on take up of simple funerals', para 3.8.

<sup>55</sup> CMA (2020), 'Provisional Decision Report', para 5.120.

<sup>56</sup> CMA (2020), 'Provisional Decision Report', para 5.104 (b).

suggests that they may be offering products that fit somewhere between Co-op's standard and simple offerings.

- 4.29 With regard to the standard price and volume effect of changes in simple prices, we have clearly shown to the CMA in the past that:
- (a) The price reduction in Scotland for simple funerals is strong evidence that consumers react to changes in prices which lead to lower volumes of standard funerals.<sup>57</sup>
  - (b) Our standard funeral prices have been kept flat in nominal terms since 2017, leading to lower prices in real terms. As we noted in our response to the Working Papers, over the period 2013-19, Co-op's volumes of standard funerals have decreased by a cumulative [X]%. Part of the reduction was certainly a direct effect of substitution to lower-cost options within Co-op. As Co-op has not increased the prices of standard funerals since 2017 (and significant switching to simple was observed at the time), it is unclear how the CMA can infer that further price increases would not lead to further substitution (i.e. that there is no constraint). On the contrary, the level of switching and cannibalisation was higher than we expected, and resulted in pressure on at-need ARF, which is one of the contributing factors to our downward trajectory in profitability. In other words, the evidence indicates that price increases may have been unprofitable, and that the pricing of our standard funerals is constrained by the availability of low-cost options (further price increases would certainly be financially unsustainable).<sup>58</sup>
- 4.30 The CMA dismissed the initial descriptive analysis on the positive correlation between the price differential between standard and simple funerals and the proportion of simple funerals in the funeral mix of a branch when using appropriate time periods (see our response to the paper on the take up of simple funerals) saying that there is 'mixed evidence of a positive correlation'.<sup>59</sup> We disagree with this for the following reasons:
- (a) Our evidence shows that the correlation between the take-up of simple funerals and price differential holds for all periods except the last period of four months between September and end of December 2018 when there was an increased level of substitution between simple and CWC funerals.
  - (b) The fact that the difference between price bands 2-5 is not very large should mean the CMA should put more weight on the positive correlation identified between the extremes of the distribution that display the highest price differential instead of dismissing this evidence.
  - (c) Our analysis cannot show how our standard customers switch to other provider's simple funeral because we do not have the necessary data, however, we provided evidence in the past that our simple funeral package has wide appeal and is capable of serving the needs of most customers especially when presented clearly to customers (see discussion of econometric analysis below).
  - (d) As set out in Co-op's response to the Working Paper on the Take up of simple funerals, CMA's additional analysis using simple funeral ARF and data from other funeral directors contains a number of flaws and, overall, it does not undermine the original Co-

<sup>57</sup> Co-op (2020), 'Response to Working Paper on take up of simple funerals', para. 2.5.

<sup>58</sup> Co-op (2020), 'Response to Working Paper on constraint imposed on standard funerals by low-cost options – analysis of internal documents and RFI responses from three largest funeral directors', para. 35.

<sup>59</sup> CMA (2020), 'Appendix K of the Provisional Decision Report: Analysis of Dignity Price Trials and Quantitative Submission by Co-op', para 40.

op result that there is a link between the prices of different types of funeral and the level of simple funeral take-up conditional on consumers being aware of the different options and the respective prices.

- 4.31 To provide rigorous evidence beyond the simple correlation analysis explained above, we have also submitted to the CMA an econometric analysis by Oxera. We are glad to see that the CMA accepted '*some of the directional conclusions of Oxera's econometric analysis*'<sup>60</sup>, however, we disagree with CMA on the decision to disregard this as evidence of a competitive constraint from simple funerals to standard funerals.
- 4.32 First, in relation to the size of the estimated coefficients and the ability of Oxera's analysis to disentangle the true effects the CMA states they '*agree with the Co-op's assessment that the size of the estimated effect of these events is not informative, as changes in the price ratio and other 'events' occur at similar times and therefore their individual effects cannot be disentangled. Therefore, [CMA] cannot conclude that the estimates in paragraph 55 are meaningful and that the analysis presented gives evidence of a significant competitive constraint*'<sup>61</sup>. We are very disappointed that the CMA has chosen to blatantly misrepresent our conclusions from the study. We fundamentally disagree with this statement as Oxera's analysis clearly shows that the effect does exist, is significant, both statistically and economically and the magnitude of the estimated coefficients is likely to underestimate the real effects, not overestimate them.<sup>62</sup> In particular:
- (a) The introduction of Funeral Choices in July 2017 and the inclusion of Direct Cremation in the Funeral Choices brochure in September 2018 coincide (or are very close in time) with the more substantial price changes in our dataset. Section A1.1 of the econometric submission shows that excluding the indicator variables for the two events that are close in time with substantial price changes leads to an increased magnitude of the price effect.
  - (b) Oxera included a time trend explanatory variable to capture the possible upward trend in time in the take-up of Simple due to social norms shifting towards lower-cost funerals. Since all the price changes in our dataset lead to an increasing price ratio, these additional explanatory variables might capture part of the price effect and bias downward the coefficient of price ratio.
  - (c) Oxera uses fixed effects to control for unobservable home-specific characteristics and avoid the risk of biased coefficients due to idiosyncrasies of each home. This, however, means losing between-home variation and accepting that the estimated effect is likely to be an underestimation of the true effect.
- 4.33 Second, the CMA have misinterpreted Oxera's calculations that show how a percentage point change in funeral mix translates into a change in simple volumes.<sup>63</sup> A 1% change in the mix assumes that total volumes, and not standard volumes, remain constant. This allows the changes in the price ratio to have, as expected by the CMA, an effect on volumes of both standard and simple funerals.
- 4.34 Third, the CMA argues that Oxera's results might be evidence of customers switching from Co-op's standard funerals to standard funerals offered by other funeral directors rather than them

<sup>60</sup> CMA (2020), 'Appendix K of the Provisional Decision Report: Analysis of Dignity Price Trials and Quantitative Submission by Co-op', para 59.

<sup>61</sup> CMA (2020), 'Appendix K of the Provisional Decision Report: Analysis of Dignity Price Trials and Quantitative Submission by Co-op', para 60.

<sup>62</sup> Oxera- Econometric analysis of substitution between funeral packages, section Sources of underestimation of the magnitude of coefficients.

<sup>63</sup> CMA (2020), 'Provisional Decision Report', para 5.124(b) and Appendix K, para. 61(a).



switching to Co-op's simple funeral.<sup>64</sup> The fact that the econometric analysis cannot fully disentangle the extent to which customers respond to changes in prices switching to different providers (presumably offering low-cost options akin to Simple, if not in name) rather than switching to a lower priced Co-op option is, if anything, a source of underestimation of the competitive forces constraining Co-op pricing behaviour. In the CMA's own words, switching to other competitors rather than to different propositions offered by the same provider is generally a much stronger competitive constraint.<sup>65</sup>

- 4.35 Fourth, the CMA argues that overall, results are potentially based on a small sample of price changes.<sup>66</sup> Again, the CMA is selectively quoting aspects of the report and thus misinterpreting our case. We note that, while it is true that in the period under consideration Co-op implemented two main price changes, this does not at all constitute the only source of variation in the data and the sample upon which the analysis is based is much larger, including numerous re-allocations of branches between price bands over time, which are not visible in Figure 4.1. Indeed, we explicitly argue in the report that the extent and granularity of the variation is sufficient to estimate a distinct price effect, and this is unquestionably confirmed by the fact that our price effect coefficients are statistically significant, and consistently so across a range of specifications and sensitivities. We find it ironic and deeply regrettable that the CMA is willing to dismiss robust and statistically significant findings, when large parts of its own analysis are based on far smaller and unreliable samples with no statistical validity.
- 4.36 In conclusion, based on our econometric analysis and the analysis of the price change of simple funerals in Scotland, it is not accurate to say that 'when it comes to choosing a funeral, customers (including the least well off) are insensitive to price'.<sup>67</sup> On the contrary, our analysis showed a statistically significant (and likely to be underestimated) increase in the uptake of simple funerals at Co-op branches in response to (i) increases in the price differential between standard and simple prices and (ii) the introduction of its Funeral Choices brochure.

#### *Competition from and within CWC*

- 4.37 We disagree with CMA's conclusion that direct cremations will remain a small part of the market.<sup>68</sup> The CMA did not appropriately weight the evidence presented on the level of competition currently present in the market for the provision of direct cremation and the prospect of take-up increasing in the future. Crucially, future take-up is conditional on a more consistent approach in the presentation of this product across funeral directors. This is supported by evidence from the SunLife and Royal London reports.<sup>69</sup> In addition, our evidence on international benchmarking indicates that some comparator countries have a much higher proportion of direct cremations (19% of all funerals in Australia and 16% of all funerals in the USA) compared to the current [0-5]% in the UK.<sup>70</sup>
- 4.38 We agree with the CMA that direct cremation propositions are a constraint on other funeral propositions.<sup>71</sup> In our experience, we observed that the market is working well and consumers are reacting to lower costs propositions. The introduction of CWC in May 2018 was associated

<sup>64</sup> CMA (2020), 'Provisional Decision Report', para 5.124(b) and Appendix K, para. 61(b).

<sup>65</sup> See CMA (2020), Working Paper on the Take-up of Simple.

<sup>66</sup> CMA (2020), 'Provisional Decision Report', para 5.124(b) and Appendix K, para. 61(c).

<sup>67</sup> CMA (2020), 'Provisional Decision Report', para 6.

<sup>68</sup> CMA (2020), 'Provisional Decision Report', para 5.139.

<sup>69</sup> Co-op (2020), 'Response to Working Paper on constraint imposed on standard funerals by low-cost options – analysis of internal documents and RFI responses from three largest funeral directors', para 21.

<sup>70</sup> Co-op proactive submission in April 2019, Annex 1 Funerals Regulation in Comparator Countries prepared by Oxera.

<sup>71</sup> CMA (2020), 'Provisional Decision Report', para 5.142.

with a [X] in the share of simple in Co-op's mix of funerals and a [X] in the take-up of simple after CWC was included in the in the Funeral Choices brochure.<sup>72</sup>

## 5 Response to Section 6 of the Provisional Decision: How Crematoria Compete

### Introduction

- 5.1 In the PDR, the CMA provides more evidence of AECs in crematoria than in the funeral director market; however, the PDR does not advocate any measures to address these.
- 5.2 The evidence provided by the CMA suggests that there is a lack of choice for consumers, which results in a lack of price competition. As outlined previously<sup>73</sup>, the issues are caused by problems on the supply side of the market. Given that the nature of the problem is a supply-side issue it is likely that a supply-side remedy would be best suited to addressing the AECs the CMA has identified.<sup>74</sup> In contrast, the evidence on the funeral services market points toward a broadly well-functioning market, particularly on the supply side and we believe it would be wholly disproportionate and ineffective to impose price regulation for funeral directors.<sup>75</sup> This response focuses on problems in the crematoria services market that do not (or to a far more limited extent) exist in the funeral services market and why crematorium services price regulation and/or access obligations may be proportionate and effective in addressing these issues.
- 5.3 Third Party fees make up a very large percentage of the cost of a 'funeral service'. By far the largest of these fees relates to the cost of cremation and this proportion has risen during 2020 as a result of: (i) lower priced funeral services (a result of a shift towards simple funerals/ direct cremations); and (ii) increases in crematoria fees. Point (ii) is further evidence of an AEC in the crematoria market given that prices have risen at a time of increased throughput / volumes while the operating costs of a crematoria have been largely unchanged (unlike funeral directors costs which have risen as described at 4.4 (e) above).
- 5.4 The lack of competition (see 5.8 below) has resulted in increased fees and low availability of crematoria with time slots that are suitable for most customers. The latter issue has been particularly acute during the Covid-19 pandemic resulting in large increases in the time which deceased spend in care (directly increasing funeral directors' costs). Recent reports have highlighted what we have been seeing, namely large increases in the cost of cremations across the UK, which are not obviously justified by increased costs.<sup>76</sup> This contrasts with the approach of funeral directors, who have held prices and seen price per funeral drop sharply, even as costs (notably for staff and PPE) rose.
- 5.5 Given that crematoria and burial fees make up such a large part of the cost of a funeral, any attempt to reduce fees (or increases in fees) would have to tackle third party disbursements at the same time: the provisional remedies do not do this. In paragraphs 2.40-2.41 the CMA acknowledges that Local Authorities (who account for 61% crematoria in the UK<sup>77</sup>) have a wide discretion in relation to pricing and the restrictions on recovering costs do not necessarily mean having any regard to efficiencies. Increases in crematoria fees increase the overall price of funerals (and undermine measures to reduce prices) but the CMA doesn't comment on this, or propose measures to address it.

<sup>72</sup> Oxera- Econometric analysis of substitution between funeral packages.

<sup>73</sup> Co-op (2020), 'Response to the CMA's Working Paper on the Remedy Options for regulating the price of crematoria services'.

<sup>74</sup> Co-op (2020), 'Response to the CMA working paper 'Remedy options for regulating the price of crematoria services'.

<sup>75</sup> Co-op (2020), 'Response to the CMA working paper 'Remedy options for regulating the price of funeral director services', para 1.8.

<sup>76</sup> <https://www.bbc.co.uk/news/uk-49266195>

<sup>77</sup> CMA (2020), 'Provisional Decision Report' para. 2.95.

*Crematoria competition and outcomes*

5.6 We have not critically assessed the evidence proposed by the CMA in relation to the crematoria outcomes. If the standard of the evidence is similar to that for the assessment of the funeral director market, no strong conclusions on the remedies should be drawn based on this evidence. However, in the following paragraphs, we take the analysis presented by the CMA at face value.

*Price trends*

5.7 The CMA observes significant increases in cremation fees. According to the CMA, after adjusting for inflation, the average standard cremation fees increased by 48% at private crematoria and by 37% at local authority crematoria in the last 10 years.<sup>78</sup> Over the same period, the two largest private crematoria operators have increased prices by 59% and 54%, also after adjusting for inflation. Certain local authorities have at least doubled their fees.<sup>79</sup> This is compared to an increase, in real terms, by 37%, 19% and 10% in funeral services professional fees by Dignity, Co-op, and others respectively over the same period.<sup>80</sup> Moreover, the average revenue per funeral for simple and standard funerals decreased significantly in 2016, 2017, and 2018,<sup>81</sup> while the average standard cremation fees continued to increase over this period.<sup>82</sup>

*Local competitive constraints*

- 5.8 The CMA considers 'that crematoria across the UK face limited competitive constraints'.<sup>83</sup>
- (a) The CMA notes that only eight out of 303 crematoria have their closest rival within a 10-minute drive time.<sup>84</sup>
  - (b) The Market Investigation consumer survey shows that almost half of the consumers reported that they had a choice of only one local crematorium.<sup>85</sup>
  - (c) Only 34 out of 93 of crematoria have been found to have at least one rival fascia within their 80% catchment area.<sup>86</sup>
- 5.9 By way of comparison with the market for funeral services, in 2018, the median number of rival fascia Co-op funeral homes had within their 80% catchment area was 7.<sup>87</sup>
- 5.10 Crematoria do not appear to respond to competition with changes in price. Lack of price competition is confirmed by almost three quarters of local authority crematoria operators (136 out of 183) who stated that they generally do not respond when their rivals change fees.<sup>88</sup> Only 8% (14 out of 183) of local authority crematoria stated that they change prices in order to be

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<sup>78</sup> CMA (2020), 'Provisional Decision Report', para 7.284.

<sup>79</sup> CMA (2020), 'Provisional Decision Report', para 7.284.

<sup>80</sup> Co-op's calculations based on CMA (2020), 'Appendix N to the Provisional Decision Report: Funeral Director Pricing Levels and Trends', Table 6.

<sup>81</sup> Co-op (2020), 'Response to the CMA Working Paper Remedy options for regulating the price of crematoria services'.

<sup>82</sup> CMA (2020), 'Provisional Decision Report', Figure 25.

<sup>83</sup> CMA (2020), 'Provisional Decision Report', para 6.194.

<sup>84</sup> CMA (2020), 'Provisional Decision Report', tables 18 and 19.

<sup>85</sup> Market Investigation Consumer Survey, Tables 308-310, Questions C1 + C2 summary.

<sup>86</sup> CMA (2020), 'Provisional Decision Report', para 6.87.

<sup>87</sup> Oxera analysis of Co-op location data on the 1062 homes for which information on the number of competitors in 2018 was available.

<sup>88</sup> CMA (2020), 'Provisional Decision Report', para 6.50.

competitive.<sup>89</sup> The CMA finds that ‘where crematoria face three or more rivals, these crematoria do not offer consistently lower prices or higher quality’.<sup>90</sup>

- 5.11 The CMA also notes that Dignity applies blanket revenue targets across its 46 crematoria and increases have been moderated only to a small extent in the areas where there were more competitors.<sup>91</sup>
- 5.12 This is in contrast with the funeral director market where funeral directors have tried to maintain competitive price offers. For example, as the CMA notes, the growth of Co-op’s average selling prices for low-cost funerals has been persistently and significantly below inflation as response to competitive pressures.<sup>92</sup> Furthermore, the CMA notes that funeral directors Dignity and Co-op have experienced long-term decline in their market shares and suggests that this may be due to rivals charging lower prices.<sup>93</sup>

### *Market entry*

- 5.13 The CMA finds that the impact of entry on the crematoria services market is limited.
- 5.14 The CMA notes that over 2008–18, only seven private crematoria experienced entry within the 10–20 minute normal drive time band.<sup>94</sup> In comparison, over the period 2013-2018, at least 328 out of 890 Co-op homes experienced entry within their 80% catchment area.<sup>95</sup>
- 5.15 Evidence on volumes suggests that in three years after crematoria face entry, their volumes start growing again at similar rates as before the entry. In contrast, Co-op funeral homes that experienced entry had consistently declining volume growth rates and those growth rates were consistently lower than for the homes that faced no new entry.<sup>96</sup> In 2019, 86.5% of the 363 new non-Co-op entrants for the previous 5 years were still active in the market, which suggests that entry was successful and resulted in sustained increases in competition.<sup>97</sup> Econometric analysis presented by the CMA shows that there is limited impact of entry on cremation fees, and where there is an effect, it is opposite to what would be expected as a competitive response: ‘incumbent local authority crematoria that experience entry do not change their fees in response’,<sup>98</sup> while private crematoria fees tend to increase rather than decrease when faced with entry.<sup>99</sup>
- 5.16 We note that recent new entry is observed predominantly in rural areas, rather than urban areas. This is contrary to what we would expect in a competitive market, in that entry should concentrate in higher-density areas offering more opportunity for capturing new business. This is exactly what we observe in the funeral director market. Entry patterns in crematoria are instead largely driven by planning regulations and restrictions, where these do not follow a competitive logic but are rather a result of other considerations. We believe this explains why the CMA is finding that crematoria entry, even where it occurs, has limited impact on the crematoria services market.

<sup>89</sup> CMA (2020), ‘Provisional Decision Report’, para 6.49.

<sup>90</sup> CMA (2020), ‘Provisional Decision Report’, para 7.247.

<sup>91</sup> CMA (2020), ‘Provisional Decision Report’, para 6.78.

<sup>92</sup> Co-op (2020), ‘Response to the CMA working paper on Company-level price and market share analysis’, para 2.14.

<sup>93</sup> CMA (2020), ‘Provisional Decision Report’, para 5.86.

<sup>94</sup> CMA (2020), ‘Provisional Decision Report’, para 6.149.

<sup>95</sup> Oxera analysis of Co-op local data on the 890 homes for which information on the numbers of competitors in both 2013 and 2018 was available.

<sup>96</sup> Co-op (2020), Response to the Working Paper on Company-level price and market share analysis, para. 2.7.

<sup>97</sup> Co-op (2020), Response to the Working Paper on Company-level price and market share analysis, para. 2.6.

<sup>98</sup> CMA (2020), ‘Provisional Decision Report’, para 6.166.

<sup>99</sup> CMA (2020), ‘Provisional Decision Report’, para 6.165.

*Potential Remedies*

- 5.17 As we have previously stated<sup>100</sup> the rationale for introducing price regulation is stronger for crematoria than it is for funeral directors given the more significant supply-side concerns for crematoria, which are highlighted by recent price rises and capacity issues during the Covid-19 pandemic. The situation may also suggest that access remedies of some form may be appropriate, to ensure slots are fully available to all funeral directors on a fair basis.
- 5.18 The PDR highlights the severe lack of crematoria in the UK. We urge the CMA to make recommendations on changes to the planning regime which may lower barriers to new entrants and increase capacity in the UK.
- 5.19 Finally, we note that the CMA has failed to consider recommendations which would increase options for the disposal of the deceased. The Burial and Cremation (Scotland) Act 2016<sup>101</sup> permits Scottish Ministers to approve alternative methods of disposal and such legislation would be welcome in other parts of the UK, at least as a signal that these forms of innovation would be welcome.

*Implications for price regulation*

- 5.20 The CMA's findings suggest a number of issues that significantly affect the supply of crematoria services. Notably, these do not affect the supply of funeral director services.

*Price regulation, a supply-side remedy, is suited to solve a supply-side issue*

- 5.21 The CMA finds that the main economic barriers to entry in the crematorium services market relate to the high initial sunk costs required and the need to find a suitable area where the new crematorium will be able to conduct sufficient volumes to cover its fixed costs.<sup>102</sup> Consistent with high barriers to entry, the CMA finds that 'the vast majority of local markets for crematoria services are concentrated, many highly so'.<sup>103</sup>
- 5.22 The high level of concentration of the crematoria services market results in many customers lacking choice in crematoria. The CMA's analysis of several sources of evidence suggests that the majority of consumers are not willing to travel for more than 30 minutes (at cortege speed) to a crematorium.<sup>104</sup> Unsurprisingly, given that just under 50% of crematoria do not have a rival fascia within a 30-minute cortege drive time',<sup>105</sup> 47% of consumers reported they did not have a choice the services of which local crematoria to use.<sup>106</sup>
- 5.23 The nature of the problem, i.e. the limited choice of crematoria, is a supply-side issue that is likely to be best solved by a supply side remedy.
- 5.24 The CMA also finds that the lack of consumer choice in crematoria results in the lack of price competition. The CMA notes that 'crematoria across the UK generally appear to face limited competitive constraints when setting prices'.<sup>107</sup>

<sup>100</sup> Co-op (2020), 'Response to Working paper on Remedy Options for Regulating the Price of Crematoria Services', para 6

<sup>101</sup> s99, <https://www.legislation.gov.uk/asp/2016/20/contents/enacted>

<sup>102</sup> CMA (2020), 'Provisional Decision Report', para 4.57.

<sup>103</sup> CMA (2020), 'Provisional Decision Report', para 4.103.

<sup>104</sup> CMA (2020), 'Provisional Decision Report', para 4.42.

<sup>105</sup> CMA (2020), 'Provisional Decision Report', table 18.

<sup>106</sup> Market Investigation consumer survey, Tables 308-310, Questions C1 + C2 summary. Base: all UK adults 18+ who (i) arranged an at-need cremation with a 'high street' funeral director or (ii) arranged an attended cremation with an online-

<sup>107</sup> CMA (2020), 'Provisional Decision Report', para 6.78.

- 5.25 This is in line with consumer survey results and discussions with crematoria operators and independent funeral directors, which suggest that price is not an important factor to consumers. Where survey respondents did not use the closest crematorium, only 1% cited price as the reason.<sup>108</sup>

*Price regulation is likely to be a proportionate remedy in the case of crematoria*

- 5.26 As previously submitted, the crematoria market exhibits a number of characteristics that are different from funeral services, such as the homogeneous nature of the services,<sup>109</sup> and the relatively small number of operators. These characteristics make the crematoria services market more suitable for price regulation.<sup>110</sup>
- 5.27 Typically, in markets with limited or no competition, which is due to the market structure and barriers to entry (as is suggested to be the case in the crematoria services market), there is a lower risk that price regulation will introduce distortions to competition.
- 5.28 As detailed above, the CMA finds a supply-side issue in crematoria services market, i.e. the lack of consumer choice in crematoria, which results in the lack of price competition. A supply-side remedy such as price regulation may therefore be the appropriate solution.
- 5.29 We note the CMA's conclusion at paragraph 7.245 of the PDR that crematoria fees are higher where competition is lower. As stated above, crematoria fees represent a very significant part of the overall cost of funeral services (with disbursements included) and we are disappointed that the CMA has not proposed any steps that might enhance competition or help to reduce future fee increases: the absence of any such measures undermine any attempts to control the prices of funeral directors' services.

## **6 Response to Section 7 of the Provisional Decision: Outcomes**

### *Introduction*

- 6.1 This section summarizes Co-op's submission in response to Section 7 of the PDR focusing on price outcomes. A complete response can be found in Appendix 1.
- 6.2 We note that overall the analysis proposed in Section 7 is very similar to the analysis performed during the Market Study and put forward again in the Working Papers published in early 2020. There has been no significant change in the analysis and the CMA has failed to address the great majority of the concerns we highlighted in the responses to the Working Papers.
- 6.3 As a consequence, we are still convinced that the CMA's evidence base contains numerous fundamental flaws which limit the extent to which any firm conclusions can be drawn on the functioning of the at-need funeral director market. In particular, we consider that the lack of robustness characterising most of the proposed analyses should dissuade the CMA from proposing intrusive remedies (such as price regulation) on the basis of the evidence on outcomes contained within the PDR. Specifically on price regulation, we note that this is a measure of last resort—used only where other interventions have been fully tried and proven to be ineffective.

<sup>108</sup> CMA (2020), 'Provisional Decision Report', table 15.

<sup>109</sup> CMA (2020), 'Remedy options for regulating the price of crematoria services', para 49.

<sup>110</sup> Co-op (2020) response to the CMA working paper 'Remedy options for regulating the price of crematoria services', para 1.8

- 6.4 To the extent that any conclusions can be drawn from the CMA's analysis, it suggests that the funeral market has changed significantly over the period assessed, with improved outcomes for consumers in recent years and lower profits earned by providers.
- 6.5 We are disappointed that the CMA continues to pursue a purely backward looking analysis, relying on data series dating back to 2006 to draw its conclusions. It is hard to see what relevance such data has in a market that has changed significantly over the last five years, even before the start of the Coronavirus pandemic. We therefore urge the CMA to give additional weight to the evidence relating to the most recent time period. A forward looking view is crucial to fully understand the dynamics of the funeral market today and, in particular, design remedies that are appropriate and proportionate for the market as it will be in the future and not as it was in the past.
- 6.6 We outline below the main flaws in CMA's analysis and conclusions considering each data source in turn.
- 6.7 We discussed in section 2 of our response to the Working Paper on 'Funeral directors pricing levels and trends' that we consider SunLife data to suffer from a number of biases that should warn against putting excessive weight on analysis based on this data source. The CMA itself acknowledges the existence of data issues leading to 'sampling biases'. We also consider that the combination of a small sample and an inconsistent sampling methodology are weaknesses of a dataset that cannot be effectively corrected by applying ex-post adjustments and re-weightings. This is confirmed by the impossibility of re-weighting simultaneously based on two key dimensions such as share of supply and regions.<sup>111</sup>
- 6.8 We note that the number of years considered for the analysis has been extended as compared to the 'Funeral directors pricing levels and trends' Working Paper. The period under consideration now covers 14 years (2006-2019), compared to 10 years (2010-2019) in the Working Paper. We strongly disagree with the decision to extend the time period further back into the past, since it has the effect of creating: (a) an even more backward looking approach that misrepresents the way the market functions today and its future evolution; (b) lower level of data accuracy; and (c) lack of complementary evidence, such as internal documents, that could potentially be used to explain trends in the earlier years. We find it very disappointing that, in the absence of more representative data, the CMA would choose to extend the analysis in a way that runs counter to vocal and justified representations made by parties in response to the Working Papers.
- 6.9 Notwithstanding the above concerns, we note that some of the findings align with our experience of how the market has evolved over the last few years. In particular, the SunLife data clearly shows the existence of significantly declining price indexes (weighted by share of supply) in real terms in the period 2016-2019 (real CAGR equal to -1.6%) and a combined CAGR in the period 2010-2019 just above inflation (real CAGR equal to 0.6%).<sup>112</sup> In contrast, in the period under analysis disbursements (weighted by burial/cremation volumes) grew consistently and at higher rates compared to professional fees (disbursements real CAGR equal to 1.9% in 2010-2019 and equal to 0.7% in the period 2016-2019).<sup>113</sup>
- 6.10 These findings suggest that: first, there are increasing competitive pressures and dynamism in the supply of at-need funerals; and second, the increasing trend in disbursement costs should

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<sup>111</sup> The CMA, referring to the data re-weighting based on share of supply and regions, in footnote 858 of the Provisional Decision Report and footnote 15 of Appendix N, states that it 'cannot apply both adjustments simultaneously due to the limitations of the data'.

<sup>112</sup> See Appendix 1, Table 1.

<sup>113</sup> See Appendix 1, Table 2.

be carefully taken into account when trying to evaluate the funeral directors market on the basis of ATR.

*Data received from the funeral directors (first mentioned PDR 7.27(a))*

- 6.11 We note that the granularity of the data that the CMA has collected from funeral providers differs significantly across different types of funeral directors. This feature is likely to cause a variety of issues regarding data interpretation and the comparison between groups of funeral providers (making it impossible to compare price/quality differentials).
- 6.12 First, the available data for the three largest providers (Co-op, Dignity, and Funeral Partners), which is sufficiently granular to compute average revenues (ARF) for at-need funeral directors fees, shows that over the period 2013-2018, ARF grew at a rate that only slightly exceeded inflation (real CAGR +0.2%). Moreover, disaggregating by standard and simple funerals, it can be observed that simple funerals showed a significantly smaller price growth in 2013-2016 (real CAGR of 1.9% against 4.0% for standard funerals) and a bigger fall in 2016-2018 (real CAGR of -7.1% against -1.0% of standard funerals).
- 6.13 We believe that this constitutes strong evidence of falling prices in real terms across the three largest funeral directors in recent years and it is clearly at odds with the CMA's conclusion that price caps are required to prevent providers exploiting their customers. Moreover, this information must be read in combination with the evolution in the mix of funerals provided, that is gradually shifting towards simple and other low-cost options. In the case of Co-op, for example, the proportion of simple funerals in the mix grew from [5-10]% in 2013 [20-30]% in 2019 ([20-30]% if direct cremations are also taken into account).
- 6.14 Second, the information presented by the CMA regarding regional Co-ops constitutes additional evidence in favour of a changing trend in funeral prices in the latest years and against the CMA interpretation of ever-increasing fees. Indeed, in the period 2013-2018 the ATR for at-need funerals provided by the regional Co-ops grew at a rate in line with the inflation (real CAGR of 0.3%) and the ATR of both standard and at-need funerals as a whole decreased in the latest years 2016-2018 (real CAGR of -0.9% and -0.8% respectively). Simple funeral ATR displayed instead a growth in 2016-2018, but this occurred after a decline at an opposite rate in the years before. It is worth noting that these trends are affected by the evolution of disbursement costs.
- 6.15 Third, we note that the analysis relating to the 13 large funeral directors outlined in the PDR and Appendix S differs from the one provided by the CMA in the 'Funeral directors pricing levels and trends' Working Paper with regard to some important methodological aspects as well as to the conclusions. We also note that some of these differences appear to be the source of inconsistencies with other CMA statements and conclusions contained in the PDR, the appendices and previously published papers.
- 6.16 Fourth, our economic advisers Oxera have computed the real CAGR of the ATR for the smaller funeral directors reported in Table 15 of Appendix S to the PDR over the years 2016-2018.<sup>114</sup> The average of the real CAGR of the ATR was equal to -0.7%. This was the result of 65% funeral directors experiencing a CAGR that was negative or below inflation. Moreover, two thirds of the funeral directors that experienced CAGR above inflation were among the 50% of least expensive funeral directors in 2016. Despite the limitations of the available data, we believe that the analysis of the smaller funeral directors' revenues constitutes evidence of a price decrease in recent years.

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<sup>114</sup> Using the RPI index sourced from ONS.



*Analysis of pricing trends using Beyond data*

- 6.17 Beyond data used by the CMA for this analysis consists mostly of smaller funeral directors as it does not contain information on branches of Co-op, Funeral Partners, regional Co-op or Dignity's branches.<sup>115, 116</sup> We note that the CMA has placed significant weight on this data to carry out its price dispersion analysis, but has downplayed its relevance with regard to the insights it could bring in relation to the smaller funeral directors' price trends.
- 6.18 We consider that the information reported at paragraphs 58 and 60 of Appendix N to the PDR constitute useful complementary evidence to the analysis of the trends in ATR for small funeral directors. In particular, the CMA finds that considering the 88 branches present in the sample throughout 2016 to 2019 with less than 30% year on year price changes, the average real CAGR between 2016 and 2019 was -1.5%. Considering the 381 branches present throughout 2017–2019 with less than 30% year on year price changes, the average real CAGR between 2017 and 2019 was -3.1%. This constitutes additional evidence of a price decrease across small funeral directors in recent years.

*Simple funeral price levels and trends*

- 6.19 We consider that the analysis of simple funerals price levels and trends carried out by the CMA using data received from the price comparison website Your Funeral Choice (YFC) constitutes strong evidence of the significantly declining trend in simple funeral pricing, therefore confirming and strengthening the findings coming from data provided by the funeral directors.
- 6.20 Table 5 of Appendix 1 shows that simple funeral prices averaged across all funeral directors in the Your Funeral Choice dataset decreased in real terms by -3.2% on average per year in the period 2014-2018 and by -5.36% on average per year from 2016 onwards. The real terms fall in prices is greater in the most recent years covered by the analysis. This is consistent with the interpretation that a price decrease has occurred in recent years.

*Cost drivers*

- 6.21 We believe that the CMA's analysis of cost drivers is neither sufficient nor complete enough to draw clear conclusions on whether costs can be considered to be the driver of price increases. With regard to small firms in particular, the CMA relies on information from a very small and potentially not representative sample of small funeral directors and is simply anecdotal evidence that does not address directly the issue of whether price increases are driven by costs.
- 6.22 We also disagree with CMA's dismissal of the importance of Co-op's increasing property and transport costs (e.g. increasing property costs partially due to new openings and transport costs to fleet renewals). These strategic decisions were taken in response to increasing levels of competition in the market combined with an increase in consumer focus on quality and our need to serve our members where they live. We also disagree with the CMA that the increased time in care does not constitute a large driver of costs. The PDR fails to make clear that time in care differs by funeral directors; funeral directors with appropriate facilities tend to bring the deceased into their care more quickly after the date of death, whereas others leave the deceased in third party mortuaries for longer periods. Bringing a deceased into the funeral director's care early on has an underlying cost associated with it, but we believe this is the right thing to do by families, who do not wish to see their loved ones rest in public mortuaries for extended periods of time.

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<sup>115</sup> CMA (2020), 'Appendix O to the Provisional Decision Report', paragraph 33.

<sup>116</sup> CMA (2020), 'Appendix N to the Provisional Decision Report', footnote 26.

6.23 Lastly, we note that personalization is not something that can be merely added to a funeral in a way that becomes more and more efficient as time passes. It requires significant staff time, as it involves a close dialogue with the client that leads to solutions and actions that are specific to each particular case. Co-op has, throughout the Market Investigation, repeatedly brought to the CMA's attention evidence from time and motion studies demonstrating that there is very wide variation in the amount of time spent to arrange and conduct each individual funeral. This directly contradicts the CMA's view that clients' personalisation requirements do not translate to additional costs for funeral directors.<sup>117</sup>

#### *Price dispersion*

6.24 We note that Appendix O to the PDR is almost identical to the 'Price dispersion analysis' Working Paper. In particular, while in paragraph 16 of Appendix O the CMA outlines a long list of arguments and critiques received from a variety of funeral providers, none of them were incorporated in the analysis discussed in the PDR.

6.25 We consider that the unaddressed issues in our reply to the 'Price dispersion analysis' Working Paper significantly undermine the CMA's results. These issues mainly relate to the quality of data, methodology, and the inferred conclusions.

#### *Funeral director outcomes: Introduction*

6.26 The CMA observes that the Larger funeral directors have been making profits above the cost of capital, and that the Smaller funeral directors have been making profits comparable to the Larger funeral directors on a per funeral basis.<sup>118</sup> In our response to the CMA's profitability and cost of capital working papers published in February 2020, we explained that we did not consider the CMA's evidence sufficiently robust for the CMA to draw conclusions on it.<sup>119</sup> This was also an opinion of many other parties.<sup>120</sup> The CMA has made an attempt to engage with the comments made by Co-op and other third parties, however, the quality of the evidence remains unsatisfactory.

6.27 We acknowledge that the CMA faced challenges collecting the data while the industry worked on responding to the Covid-19 pandemic, ensuring it continues to support families at this very difficult time. Due to these or other circumstances, the CMA was not able to secure the data and undertake the analysis of sufficient quality.

6.28 As a result, the CMA's analysis has been extremely backwards-looking. As we point out in other submissions and below, we see significant changes in the market, accelerated by the Covid-19 pandemic. Given the forward-looking nature of any potential remedies, we do not consider that the CMA should draw conclusions based on the 2014–18 information only. We are disappointed that the PDR does not consider 2019 data given the substantial effort put in by our colleagues to provide this information at the height of the pandemic.

6.29 In the rest of this section, we outline the reasons why we disagree with the CMA's findings on the profitability of funeral directors in the UK. These include the following.

- a) Changing market conditions. The CMA's conclusions are based on the analysis of 2014–18 data. However, the market has moved since then and is likely to keep developing rapidly, not least as a consequence of the Covid-19 pandemic. Therefore,

<sup>117</sup> CMA (2020), 'Provisional Decision Report', para 7.50.

<sup>118</sup> CMA (2020), 'Funerals Market Investigation. Provisional Decision Report', paras 7.172 and 7.174.

<sup>119</sup> Co-op (2020), 'Response to Working Paper on profitability analysis.'

<sup>120</sup> CMA (2020), 'Funerals Market Investigation. Provisional Decision Report', para. 7.167.

the conclusions drawn based on 2014–18 average levels are unlikely to be representative of the market's profitability going forward.

- b) Market coverage. The sample of the Smaller firms that the CMA is assessing may not be representative of the market and may overestimate the general level of profitability.
- c) ROCE analysis. The profitability of the Larger firms is overestimated.
- d) Cost of capital. The CMA's estimate of the cost of capital should be adjusted upwards.

### *Changing market conditions*

- 6.30 We know that the market conditions are changing. That is what we are experiencing in the business and what can be observed in the evidence presented by the CMA. Indeed, the CMA itself finds falling levels of profitability in ROCE terms for eight of the thirteen Larger firms between 2014 and 2018.<sup>121</sup> We acknowledge the CMA's finding of profits being above the cost of capital over 2014–18. However, historical evidence is helpful only as long as it is indicative of the future, which is not necessarily the case here—in this case, we strongly advise the CMA to focus on the trends rather than the levels.
- 6.31 In terms of Firm [X]'s ([X]) profitability, the CMA finds that its ROCE has been declining and is in line with the cost of capital in 2019.<sup>122</sup> The CMA argues that the decline in Co-op's profitability is 'the result of their own business practices, reducing prices and over expanding (thus increasing fixed costs)',<sup>123</sup> and disagrees that the changes were made in response to the increasing competition in the market. However, we do not see why Co-op would change its 'own business practices' (as if operating in a vacuum) to reducing the prices and expanding the network if not to gain back its market share in response to competition. The aim of the strategy was to better utilise existing care centre facilities and to capture incremental volumes in catchment areas not previously served, but its success crucially depended on an ability to capture these volumes, which did not materialise as originally envisaged because of the high levels of competition. The CMA further notes that '*...Co-op has started a process of closing down some branches, which implies that its portfolio of branches is not well configured*'.<sup>124</sup> In fact, the closures after the expansion indicate that the management's expectations at the time of deciding in favour of the expansion were different from the materialised market conditions, which, in this case, was due to the increased competition not letting Co-op's branches gain sufficient volumes.
- 6.32 For the Smaller funeral directors, the CMA states that, in its analysis, there are no suggestions of a downtrend in EBITDARS in the most recent years.<sup>125</sup> Whilst this could be the case, the CMA should not be making this inference based on a sample of relatively limited size, as further discussed below.
- 6.33 We expect the downwards profitability trend to continue even without the detrimental impact of the ongoing Covid-19 pandemic. However, we also expect Covid-19 to accelerate it by accelerating the changes in the market. The long-term effect of the pandemic is indeed uncertain but we fully expect that the changes we are observing in the market will be permanent. For example, a take-up of low-cost funerals could remain due to consumers' greater awareness about these options. We expect a shift from face-to-face contact to use of telephone and online

<sup>121</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 232.

<sup>122</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 179.

<sup>123</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 292.

<sup>124</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 291.

<sup>125</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 225.

, providing consumers with greater opportunity to compare funeral packages and providers. As a consequence of these changes, the funeral directors' profitability going forward will be substantially lower than the historical level in 2014–18. We note that our views on the impact of the Covid-19 pandemic are shared by other parties such as Dignity, Freeman Brothers, and NAFD and are not rejected by the CMA.<sup>126</sup>

- 6.34 Given the backwards-looking nature of the evidence, we do not believe that the CMA can possibly use this as a basis for conclusions about the remedies required for the market going forward.

#### *Market coverage*

- 6.35 With regard to the profitability analysis for the Smaller funeral directors as presented in Tables 15 and 16,<sup>127</sup> we note that the CMA now presents figures for a wider sample than in its Working Paper. We welcome that the CMA has expanded its sample of the Smaller funeral directors, addressing our comment on the potential confirmation bias. However, we have serious concerns about the representativeness of the sample.
- 6.36 Whilst we acknowledge the CMA's considerations about the survivorship bias and large-scale exit, we emphasise that the effect of exit of smaller funeral directors should not be discounted and it appears that the CMA has not investigated this thoroughly.
- 6.37 In terms of the correlation between the profitability and the quality of data, we still consider there is a possibility that the companies that are not able to report data may be less profitable even if the CMA does not observe any patterns based on the data available to it.
- 6.38 We do not believe that the CMA can draw market-wide inferences from the sample, without a more detailed understanding in terms of the characteristics of the operators in the remainder of the market.

#### *ROCE analysis*

- 6.39 In our response to the CMA's profitability Working Paper published in February 2020, we suggested the CMA changes its methodology to the return on capital employed ('ROCE') in relation to the following aspects: cash adjustment, building revaluation, depreciation of property, valuation of brand/trade names, and operating leases.<sup>128</sup> While we can see that the CMA followed some of our recommendations, we still consider that some methodological choices lead to the overestimation of the Larger funeral directors' profitability.

#### *Operating leases*

- 6.40 The CMA does not capitalise operating leases. As previously stated, we believe that operating leases should be capitalised, and note that the CMA has no basis to assume that the impact of this change on profitability metrics would not be material. While we acknowledge the data availability challenge that the CMA faced—the CMA states that it does not have the data for 12 out of 13 companies<sup>129</sup>—this contributes to the list of reasons why we do not consider the CMA's evidence base robust.

#### *Cash adjustment*

<sup>126</sup> CMA (2020), 'Funerals Market Investigation. Provisional Decision report', para. 5.146–9, para. 3.183.

<sup>127</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', Table 16, p. S42.

<sup>128</sup> Co-op (2020), 'Response to Working paper on profitability analysis'.

<sup>129</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of funeral directors', para. 92.

- 6.41 The CMA does not include any cash in the estimate of capital employed. It notes that ‘cash need only be included in capital employed where the cash is essential to the running of the business, for example ‘trapped’ in a supermarket till’.
- 6.42 This is a clear deviation from the CMA precedent without an explanation of the reasons for the change in the approach. The concept of ‘trapped’ cash in a supermarket till is no different to the cash available for payments to suppliers: cash is liquidity which is essential to the running of the business and therefore, should be added to capital employed.

#### *Valuation of brand/trade names*

- 6.43 In our response to the CMA’s Working Paper on profitability analysis, we highlighted that, besides the branch-level marketing efforts, for Larger funeral directors, the marketing costs at the company and group level should be capitalised and included into capital employed.<sup>130</sup>
- 6.44 In the CMA’s Appendix S of the Provisional Decision Report, it dismisses Co-op’s comments and concludes that ‘it would not be appropriate to capitalise any further marketing spend aside from an allowance for the build of a local reputation’.<sup>131</sup> In particular, the CMA considers that:
- (a) The company and group level marketing spend ‘has an effect in the year that it is spent and not thereafter’;<sup>132</sup> and
  - (b) Customers’ trust in the Co-op brand ‘may be a symptom of a poorly functioning market in which customers do not shop around for the best service for their needs’.<sup>133</sup>
- 6.45 We disagree with both of the CMA’s reasons and remain of the view that the company and group-level marketing costs should be capitalised to ensure the ROCE estimates appropriately reflect funeral directors’ economic profitability.
- 6.46 First, Co-op’s experiences suggest that the company and group-level marketing efforts can have long-lasting business impacts. For example, Co-op launched its ‘Back to Being Co-op’ transformation in 2016, which indeed had a long-lasting effect such as ensuring a unified nation-wide branding across Co-op’s different business segments including the network of funeral homes.
- 6.47 The CMA’s second reason is speculative. Contrary to the CMA’s claim, ‘customers’ trust’ resultant from the centralised marketing efforts can and normally does exist in a well-functioning competitive market, where customers have the option to ‘shop around’.
- 6.48 Lastly, the CMA’s asymmetric treatment of branch-level and company/group-level marketing costs, to an extent, discriminates against nation-wide funeral directors. For funeral networks like Co-op, which operate under a single brand, it is normal to incur marketing costs at the company and group level. These costs are not allowed for capitalisation under the CMA’s current approach. However, had Co-op chosen to incur most of its marketing costs at the branch level, the same marketing spending would be allowed for capitalisation by the CMA and incorporated in the capital employed calculation. We find such treatments to be counter-intuitive and inconsistent.

#### *Cost of capital*

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<sup>130</sup> Co-op (2020), ‘Funeral Market Investigation. Working Paper on profitability analysis. Co-op response’, para. 3.14–3.18.

<sup>131</sup> CMA (2020), ‘Appendix S to the Provisional Decision Report: Profitability of Funeral Directors’, 17 August, para. 151.

<sup>132</sup> Ibid, para. 150.

<sup>133</sup> Ibid, para. 151.

- 6.49 In our response to the CMA's Working Paper on the topic, we explained that the CMA has underestimated the cost of capital for most of the funeral directors.<sup>134</sup> In particular, we highlighted that a small company premium is warranted for most of the funeral directors, as they are significantly smaller than the six listed comparators used by the CMA, and that Co-op's cost of capital is higher than the CMA's estimate due to its ownership structure and asset-heavy business model. The same view on the small company premium was also shared by other parties involved in the current Market Investigation.<sup>135</sup>
- 6.50 In its Appendix R of the Provisional Decision Report, the CMA dismisses the parties' view on the small company premium and does not allow a higher cost of capital for Smaller funeral directors.<sup>136</sup> It does not allow for a higher cost of capital for Co-op either. We disagree with the CMA's approach and reasoning.
- (a) The CMA notes that the CAPM, which is widely used, does not 'recognise a need for investors in smaller firms to receive higher returns than those in larger firms'.<sup>137</sup> The CMA, however, does not engage with the question of whether the CAPM provides appropriate estimates of the funeral directors' cost of capital—we previously submitted evidence to the CMA showing that the CAPM is likely to underestimate the required return for Smaller funeral directors, which lack diversification.<sup>138</sup>
- (b) The CMA further notes that in a well-functioning market, the small company premium (or another type of premium to the cost of capital) would result in customers paying more to the firms with a higher cost of capital than to the firms with a lower cost of capital for the same product or service.<sup>139</sup> We note, however, that the products and services the companies offer are not the same: there are differences in the provided products and services, for which the customers are ready to pay. If the lower cost of capital is then used for any form of price regulation, other things equal, it could lead to market exit by some business models, such as small independent providers, that are valued by some customers.
- 6.51 We agree with the statement in paragraph 7.105 '*in a well-functioning market where customers have different preferences in relation to the price and quality offered, and where quality can be observed by customers (at least after the purchase), we would expect suppliers to provide different price/quality combinations and, if quality is costly to provide, higher quality being associated with higher prices*'. However, the statement in paragraph 7.107 '*that good standards can be achieved without necessarily entailing high costs and prices*' presumes a subjective standard of when such costs to support quality are 'high' or lead to 'high' prices.
- 6.52 We have made extensive investment to upgrade and improve our services (professional development, training, capital investment in mortuary facilities, security for storage of the deceased and their effects and internal assurance to monitor quality). These reasonable but significant investments in premises and processes<sup>140</sup> have materially improved the quality of services we and allowed us to compete on higher quality. The CMA's conclusions in 7.106 are

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<sup>134</sup> Co-op (2020), 'Funeral market investigation. Working paper on cost of capital. Co-op response'

<sup>135</sup> These include Dignity, Westerleigh and LCC. See CMA (2020), 'Appendix R to the Provisional Decision Report: Weighted Average Cost of Capital', 17 August, para. 21–35.

<sup>136</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of Funeral Directors', 17 August, para. 151.

<sup>137</sup> CMA (2020), 'Funeral Market Investigation Provisional Decision Report—Appendix S: Profitability of Funeral Directors', 17 August, para. 75(a).

<sup>138</sup> Oxera (2019), 'Funeral Market Investigation: approach to profitability analysis', 9 August, p. 5.

<sup>139</sup> CMA (2020), 'Funeral Market Investigation Provisional Decision Report—Appendix S: Profitability of Funeral Directors', 17 August, para. 75(b).

<sup>140</sup> As summarised in paragraph 9 of Working Paper on the Quality of 'Back of House' Funeral Director Services Response, March 2020

undermined by the small sample size of small funeral directors visited and potentially by selection bias. We believe that the quality of small funeral directors varies considerably (and has advocated back of house quality remedies as a result).

#### *Implications for price regulation*

6.53 The CMA's findings suggest a number of supply-side issues (i.e. the lack of consumer choice in crematoria, which results in the lack of price competition). As detailed above (see paragraphs 5.20-5.29 above, the crematoria market exhibits a number of characteristics that are different from funeral services, which make the crematoria services market more suitable for price regulation.<sup>141</sup>

### **7 Response to Section 8 of the Provisional Decision: the CMA's assessment of customer detriment**

#### *Introduction*

7.1 In reaching conclusions on customer detriment, the CMA has relied on out of date information that is selective and backward looking. The CMA is therefore unable to reach the correct conclusions based on an accurate assessment of the current funerals market.

7.2 As stated above, we are disappointed to note that, despite calculating a greater customer detriment in the market for crematoria services, the CMA has failed to present remedies to address it. Measures to control the pricing of funeral services will fail if disbursements continue to increase.

#### *Calculation of the detriment*

7.3 First and foremost, we observe that the detriment is determined on the basis of 2014-18 data. Because the market has changed significantly over the last few years, the CMA's estimate can only provide, at best (and aside from the numerous methodological flaws which will be explained below), a historical view of the market, and cannot in any way reflect the current level of AEC. It is extremely concerning and wholly inappropriate that the CMA then seeks to 'validate' these figures by means of an *ad hoc* and crude comparison of prices and inflation going back as far as 2006. As any regulatory intervention will apply in the future, the detriment calculation should accordingly be forward-looking and reflect the current and future expected level of AEC in the market. By failing to draw a distinction between historical and current/expected future detriment, the CMA is crystallising a distorted picture of how the market functions today, encouraging misinterpretation by the public and unfairly legitimising intrusive and disproportionate remedies.

7.4 In terms of the merit of the methodology, due to the confidentiality barriers, we cannot verify the CMA's calculations. However, Co-op's reading of Appendix V does not exclude the possibility that the CMA used only at-need funerals (i.e. excluding those paid for through redemption of a pre-paid plan ('pre-need funerals')) in the calculation of the detriment. Since the profitability analysis includes pre-need funerals, they should be accounted for in the estimation of the detriment. Assuming that the CMA has indeed applied the wrong number of funerals but all other CMA's calculations, assumptions and methodologies are correct, the £402 per funeral estimate should be adjusted to  $£402 * 84\% = £338$ , where 84% is the proportion of at-need funerals in 2018.<sup>142</sup>

<sup>141</sup> Co-op (2020) response to the CMA Working Paper 'Remedy options for regulating the price of crematoria services', para 1.8

<sup>142</sup> CMA (2020), 'Appendix V to the Provisional Decision Report: Calculation of detriment', para. 2.

- 7.5 For reasons separate from the above correction, we also disagree with the CMA's view that the calculation of the detriment is likely to underestimate the actual total detriment to customers.
- (a) In section 6, profitability, we explain that the CMA has overestimated the Larger funeral directors' profitability, which directly feeds into the detriment calculation. In the same section, we also note that the CMA's sample of the Smaller funeral directors may be biased, and that the cost of capital for the majority of the market is underestimated. More generally, we explain that we do not consider the CMA's profitability analysis representative of the future market conditions due to the backwards-looking nature of the analysis and the CMA's decision to largely ignore the clear evidence of recent trends towards greater competition and lower profitability.
- (b) The CMA argues that potential inefficiencies are not accounted for and points out that some funeral directors can provide a funeral for £1,500 less than the other ones. First, the CMA's considerations about potential inefficiencies are not based on any robust evidence but only on the management views that efficiency can be improved, which can be the case in any well-functioning market. Second, there may be regional differences affecting funeral directors' cost base, therefore, it is not appropriate to assume that all funeral directors can achieve the same price per funeral. Finally, funerals provided for £1,500 less than other funerals are very unlikely to be comparable in terms of the components and quality. We would have severe concerns if the CMA encouraged all funeral directors to provide funerals for as low a price as the lowest cost firm: customers would not benefit from this. As the CMA has recognised, this is a market where regulation is required to safeguard quality. To even implicitly suggest that reductions of this scale are appropriate across the board when quality regulation remains potentially years away risks real detriment to customers. As we have stated above at 2.6, a commoditised view of funeral services entirely misses the point of these bespoke personal services. Any calculation of customer detriment that fails to take account of quality differentials is materially flawed. By focussing on price and failing to gather evidence on quality, the CMA are comparing market leading operators' prices with funeral directors operating from non-dedicated premises using second hand equipment. There is a real risk that the remedies will advocate a 'race to the bottom' when customers repeatedly confirm they value quality, personalisation and time.<sup>143</sup>
- (c) The CMA points out that the detriment estimate does not seek to measure the detriment arising from the issues the CMA has identified in relation to the distortion of choices where recommendations or referrals are influenced by financial considerations rather than representing the best choice for the customer. We note that the financial benefits of any potential harm via the distortion of choices would, if it existed, be captured in funeral directors' profits and therefore also captured in the detriment estimate. It is unclear to us why the CMA believes they are not accounted for.
- (d) The detriment estimate also accounts for the poor back-of-house quality to the extent The CMA's suggestion that the prices would have been £480 to £630 lower in 2019 if they increased with inflation since 2006, is a wholly inappropriate comparison. This is discussed in section 6 of this response. In summary, the choice to start the analysis of prices in 2006 appears *ad hoc* and arbitrary (especially because the CMA has not assessed any other aspects of the market over that period) as well as being highly misleading, given that the CMA's focus should be on the level of AEC today and expected in the future. We also disagree with the crude assessment that any increase above inflation can be attributed to detriment (just to name an example, such an

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<sup>143</sup> Co-op (2020), 'Response to Working Paper on Customer Survey and Mystery Shopping', para 3.5



assumption fails to take into account the need to comply with changing legislation or industry practices impacting labour costs),<sup>144</sup> and do not find the CMA's analysis of cost drivers sufficient nor complete enough to draw clear conclusions on whether costs can be considered to be driving the price increases. Moreover, £480–£630 range is higher than the CMA's estimate of the customer detriment, which shows that this level of prices would not be sufficient to cover the funeral directors' economic costs.

- 7.6 Overall, we are deeply concerned that the CMA has relied on an opaque and highly questionable methodology to provide a headline figure of detriment which does not represent a realistic level of AEC in this market today, and could therefore be seized upon and misinterpreted by the public.

#### *Quality Differentials*

- 7.7 As stated above, we strongly disagree with the CMA's conclusion that there is little qualitative difference between funeral directors and seriously question the evidence base on which such a conclusion has been reached.
- 7.8 Good funeral directors take time with clients; supporting their emotional needs, advising them of options and working them to understand exactly what is best. In simple terms the best funeral directors spend more time with customers and our fixed fees (regardless of time spent) ensure we can deliver the services our customers need. If you view funeral services as entirely interchangeable good customer outcomes can be measured by low price and efficient (i.e. quick) dispatch. We disagree with this in the strongest possible terms and fear that in the Market Investigation, the CMA has lost sight of (or failed to grasp) this fundamental point.

## **8 Response to Section 9 of the Provisional Decision: Proposed remedies**

### *Introduction*

- 8.1 Throughout the course of the inquiry, we have advocated for and supported increased price transparency with regulation to improve quality. To a large extent, the remedies that the CMA proposes in the short term are consistent with this and Co-op has only limited comments to make. Our key concern is the likely substantial time lag between implementation of transparency remedies and the introduction of quality remedies and a licensing regime. Our comments are set out below in relation to each group of remedies.
- 8.2 We are extremely concerned that the CMA has improperly concluded that price regulation remedies are required in this market and should be explored in a future MIR. As set out further below, given the CMA's acknowledgement of the limitations of its review, no such conclusion can be reached now.
- 8.3 Any future MIR, if it proves to be warranted, would need a proper consideration of the facts at the time to assess whether there is in fact an AEC and what remedies (whether already in place or additional) are likely to be proportionate and effective in the circumstances. The current Market Investigation cannot provide a 'short cut' in a future process. A future MIR would also need to consider the impact of the final remedies package implemented in this MIR, which we believe could be effective, before advocating remedies which are likely to have harmful unintended consequences. As set out at 8.24 below, we believe that a future MIR will not be possible until after 2023 at the earliest. We are alarmed by the suggestion that the development

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<sup>144</sup> The working time directive and legislation re zero hour's contracts are two examples.

of a quality regulation regime, which is generally recognised as necessary and will, in practice, take time to design and implement, might be delayed until after such an MIR.

- 8.4 The package of remedies fails to capture the inter-dimensional relationship between price, quality and service. They have been considered in isolation and not as an overall package.

### Price regulation and a future MIR

*The limitations of the current process do not allow the CMA to conclude that price regulation is an effective and proportionate remedy*

- 8.5 As the CMA acknowledges, the Market Investigation has been 'significantly impacted'<sup>145</sup> by the pandemic. In particular, the CMA has recognised<sup>146</sup> that the pandemic has affected its ability to:

- (a) assess medium to longer term effects on the funerals sector;
- (b) obtain the necessary data to design and consult upon effective and proportionate price control regulation; and
- (c) research and test potential remedies.

- 8.6 The CMA itself notes that:

- (a) ***'Covid-19 has impacted upon (and may continue to impact in the longer term) the types of services offered to and required by customers and the ability of funeral directors to efficiently meet these changing requirements. Any changes in the nature of customer demand may impact upon the structure of the sector, meaning our findings, and the remedies required to address those findings, may require further consideration once the sector is more stable.'***<sup>147</sup>
- (b) ***'It has been difficult for us to obtain further data from funeral directors and crematoria operators. The pressures on the funerals sector, resulting from significantly increased death rates and changes to the way in which funeral services can be conducted, have been such that over the past four months, we have been unable to issue any additional requests for information. Further, we have received representations from funeral directors and crematorium operators that tell us that they are unlikely to have the capacity to service our information requirements whilst they continue to deal with the challenges of COVID-19. This is particularly important for the design of price control regulation of funeral director and crematoria services.'***<sup>148</sup>
- (c) ***'COVID-19 has impacted upon the financial performance and position of funeral directors and crematorium operators. However, the full impact of the pandemic on the financial performance of funeral directors and crematorium operators may not yet be reflected in their financial results. This has significant ramifications for the design and implementation of price control regulation of funeral director and crematoria.'***

<sup>145</sup> CMA (2020), 'Provisional Decision Report', para 9.2.

<sup>146</sup> CMA (2020), 'Provisional Decision Report', para 9.2.

<sup>147</sup> CMA (2020), 'Provisional Decision Report', para 9.231 (a).

<sup>148</sup> CMA (2020), 'Provisional Decision Report', para 9.231 (b).

**Accordingly, we do not consider it would be practicable for us to design effective and proportionate price control regulation at the current point in time.**<sup>149</sup>

- (d) *'The development of the design of a number of our proposed remedies requires significant engagement with funeral director and crematoria operators, as well as important third parties, such as trade associations, Central and National government and local authorities. Prior to the pandemic, we had extensively engaged not only with funeral directors and private operators of crematoria, but also with government and local authorities. All of these stakeholders have been considerably affected by the pandemic and therefore, they have been largely unable to engage with us since March 2020 and this would have been a critical period for developing the remedies, particularly price control regulation. We are expecting that their ability to engage with us will continue to be significantly hampered until our statutory deadline.'*<sup>150</sup>
- (e) *'The development of a number of our proposed remedies, particularly the information and transparency remedies, would be greatly enhanced by engagement with consumers through research and testing. It would be extremely challenging to undertake research and testing under the current restrictions imposed by government in response to the pandemic.'*<sup>151</sup>

8.7 These various admitted limitations on the CMA's evidence gathering make it very difficult to understand the CMA's apparently definitive conclusion on the appropriateness of price control remedies. For example:

- (a) *'our provisional view is that given the nature of the features we have provisionally identified, as well as the scale and persistence of the customer detriment we have provisionally found, measures that control pricing outcomes are also likely to be necessary. We note that any such measures would need to be carefully designed and consulted upon to ensure that they were as effective as possible and proportionate. Although enabling measures will support some customers in making more informed choices about their funeral services purchase, enabling measures alone are unlikely to be sufficiently impactful to fully address the AEC and detrimental effects we have provisionally found in any reasonable timeframe (and may possibly not be impactful at all). While our assessment of the options for price control regulation has been curtailed by the impact of COVID-19 on our investigation (see paragraph 9.221), we are clear from our consideration of these options (as further discussed in Appendix W) that it would be feasible to develop an effective and proportionate methodology for controlling the pricing outcomes that we have provisionally found.'*<sup>152</sup> (Emphasis added).
- (b) *'...in the absence of the challenges presented by Coronavirus (COVID-19), it would be possible to implement price control regulation of funeral director services which would be both effective and proportionate.'*<sup>153</sup> (Emphasis added).

8.8 Without the necessary information to design price control regulation and without evaluation of the evidence already submitted, no meaningful assessment of the effectiveness, reasonableness, proportionality or impact of price controls could have been made and we are highly concerned by the suggestion that this has been decided upon. Without the necessary

<sup>149</sup> CMA (2020), 'Provisional Decision Report', para 9.231 (c).

<sup>150</sup> CMA (2020), 'Provisional Decision Report', para 9.231 (d).

<sup>151</sup> CMA (2020), 'Provisional Decision Report', para 9.231 (e).

<sup>152</sup> CMA (2020), 'Provisional Decision Report', para 9.227.

<sup>153</sup> CMA (2020), 'Appendix W to the Provisional Decision Report: Remedies', para 93,

assessment, the CMA's proposed price regulation remedies (as set out in 77-93 of Appendix W) have not received the proper scrutiny and are incapable of being implemented in compliance with the Guidelines for Market Investigations (CC3). To reach the conclusion now that such remedies would be effective and proportionate is to prejudge the process of necessary information gathering and consultation required to assess any such remedies.

- 8.9 It also fails to allow for the likelihood that the pandemic itself will lead to permanent changes to the market, altering the assessment of an AEC, the customer detriment and the proportionality of the proposed remedies options. Here, the CMA acknowledges that it cannot assess this now,<sup>154</sup> but, without any evidence to support its view and recognising that it '*cannot speculate*' as to the long term effects these changes may have on competition it nevertheless asserts that its current view is that '*these developments are unlikely to alter significantly the way most people choose funerals*'.<sup>155</sup>
- 8.10 Further, as we have set out above, the evidence set out in the PDR with regard to conditions of competition as they have been (at least to 2018) is significantly flawed and does not support the CMA's conclusions as to consumer detriment from any AECs. As we have previously explained, the CMA is commenting on a market which has undergone, and is undergoing, considerable change. By concentrating on the period 2014-2018, the CMA has materially misrepresented the market as it is in 2020 and fails to take account of the evidence of ongoing changes which will impact the future. Co-op and others have submitted more recent data that demonstrates the continuing nature of these changes which the CMA has chosen not to include in the assessment set out in the PDR. By the time of any future MIR, the evidence base relied upon is likely to be at least 5 years out of date, in a period of extensive change. A future MIR cannot simply rely on the findings of an AEC in the current MIR and where the CMA itself acknowledges it has not been able to undertake appropriate work on pricing remedies or indeed remedies overall (see 8.5-8.6 above).
- 8.11 Finally, the CMA has failed to demonstrate that its provisional package of remedies (excluding price regulation) would be ineffective. The proposed range of information and transparency remedies and quality regulation are likely to be effective in solving the CMA's concerns regarding at-need funerals. Regulatory best practice is to introduce intrusive remedies only when less intrusive remedies have been shown to be ineffective. The CMA should give the package of other remedies time to impact the market, before turning to a remedy which could have such harmful unintended consequences. The use of a price control remedy in the funerals market if imposed would be both unnecessary and disproportionate. The CMA should also give proper consideration to alternatives. As the CMA has acknowledged, the way in which funeral directors frame their discussions can affect customer choices dramatically.<sup>156</sup> A remedy that builds on this insight and seeks to influence how funeral directors frame their offers to customers is, if needed, likely to be a substantially less intrusive and potentially very effective remedy.

*A future MIR must not be constrained by untested conclusions in the current MIR*

- 8.12 We are concerned that the CMA is seeking to set a starting point for a future market investigation that is unsupported and that the conclusions set out in the PDR and any final report will not be properly tested.
- 8.13 The CMA's language suggests that it expects a 'supplementary MIR' to implement the pricing controls that this Market Investigation appears to believe is necessary:

<sup>154</sup> CMA (2020), 'Provisional Decision Report', paras 9.3(a) and 1.36.

<sup>155</sup> CMA (2020), 'Provisional Decision Report', para 5.19.

<sup>156</sup> CMA (2020), 'Provisional Decision Report', para 5.29.

- (a) *'[the recommendation] is a mechanism to allow time for the impact of COVID-19 on the funerals sector to subside and for the CMA, through a supplementary MIR, **design a proportionate remedies package** that more comprehensively mitigates the effects of the AECs we have provisionally found.'*<sup>157</sup>
- (b) *'...At that point, it would be appropriate for the remedies that we have provisionally decided not to proceed with (see Appendix W), in particular price control regulation of funeral director and crematoria services, to be given closer and renewed consideration in the context of a supplementary MIR.'*<sup>158</sup>
- (c) *'we have provisionally found, measures that control pricing outcomes are also likely to be necessary'*<sup>159</sup>

8.14 For the reasons we have set out, this would be entirely inappropriate. We therefore seek amendment of the final report to remove any suggestion that price regulation remedies are likely to be effective and proportionate. Further, the Final Report should make clear that any future market investigation will need to investigate afresh the existence of any AECs, the extent of any consumer detriment and consequently the effectiveness and proportionality of any remedies it finds necessary to address them. Any other course of action would be expected to lead to a judicial review of the future market investigation.

8.15 The proposal to recommend a 'supplementary MIR' is novel. We do not understand the concept of a 'supplementary MIR' which has no statutory basis in itself. Crucially, it cannot be treated as equivalent to a remittal, where CMA conclusions in a market investigation have been broadly upheld and the CMA addresses the discrete points remitted to it by the CAT. Any future MIR would need to be on the basis that the statutory test is met at the relevant time, taking into account the facts as they then arise. There is nothing to stop the CMA doing this in any event and we do not understand the purpose of a recommendation that such an MIR be made, unless it is to improperly pre-judge that evidence.

*The CMA is bound by statutory time limits*

8.16 Following the extensive market study and market investigation, which have been ongoing since 1 June 2018, the funeral industry rightly expects a Final Report with clear and decisive outcomes; however the recommendation of a 'supplementary MIR' completely undermines this. Instead of conclusively resolving the position, the proposal will leave the industry in a state of prolonged uncertainty which is bound to have a chilling effect on investment and future planning. The CMA already has the power to make another MIR at any time in the future, if the legal thresholds are met. There is no legal basis for a 'supplementary MIR' which appears designed to prolong the market investigation beyond the clear limits imposed by Parliament. The uncertainty created undermines the aims of the legislation to fix statutory timetables for MIRs, which were introduced to reduce the cost and uncertainty on businesses from extended investigations. The uncertainty is compounded here by ambiguity and inconsistency about when a future MIR might take place.

<sup>157</sup> CMA (2020), 'Provisional Decision Report', para 9.158.

<sup>158</sup> CMA (2020), 'Provisional Decision Report', para 9.158.

<sup>159</sup> CMA (2020), 'Provisional Decision Report', para 9.227.

- 8.17 In its 2011 consultation on the competition regime<sup>160</sup>, the Department for Business Innovation & Skills (BIS), set out its rationale for reform of the markets regime and identified areas for potential improvement which included:

*Length of time taken for final decisions. Lengthy market studies and market investigations can mean that there is a delay in implementing the changes necessary to address competition problems, as well as prolonging uncertainty in markets about possible outcomes of any investigation.*<sup>161</sup>

- 8.18 BIS therefore recognised the material cost to businesses of engaging with long, complex investigations and prolonged uncertainty about possible outcomes. Elsewhere in the Consultation, BIS states:

*Efficient and timely processes and decision making are essential to ensure that the markets regime removes competition problems quickly and that benefits are realised by consumers and businesses. It is equally important that the regime does not cause prolonged and undue uncertainty in markets.*<sup>162</sup>

- 8.19 When proposing the reduction in statutory timescales for phase 2 market investigations (from 24 to 18 months), BIS was clear that it aimed to ensure that market studies could not be extended beyond the stated time limits:

*The length of time taken to process cases through the markets regime is a major cause of concern for business. Introducing statutory timescales to phase 1 and reducing phase 2 timescales would reduced [sic] the overall time taken on an investigation. This would also ensure that market studies are not extended and there is a clear trigger point for a market investigation.*<sup>163</sup>

- 8.20 In 2013, BIS published its Policy Paper on the Enterprise and Regulatory Reform Act 2013 (ERRA)<sup>164</sup> which 'sets out why the Government is undertaking the measures contained in this Act, and explains what each measure aims to achieve'.<sup>165</sup> The Government therefore explicitly set out the reasoning behind the reduction in statutory time limits in the markets regime:

*In order to ensure greater certainty and to reduce the burden to business, the Act will introduce statutory time limits – specifically, 6 months to consult on a decision to make a market investigation reference and 12 months to conclude all market studies; and it will reduce existing statutory timeframes to complete market investigations from 24 to 18 months*<sup>166</sup>.

- 8.21 The practical effect of recommending a 'supplementary MIR' is to extend the current MIR. It is clearly contradicts the Government's aim in the ERRA of reducing the burden to business from prolonged investigations. We understand that the CMA may want to look at this market again in the future. But a potential reassessment is wholly different to what appears to be an artificial construct to resume where the current MIR has paused.

<sup>160</sup> BIS (2011), 'A Competition Regime For Growth: A Consultation On Options For Reform', para 3.5 see: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31411/11-657-competition-regime-for-growth-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31411/11-657-competition-regime-for-growth-consultation.pdf)

<sup>161</sup> BIS (2011), 'A Competition Regime For Growth: A Consultation On Options For Reform', para 3.5.

<sup>162</sup> BIS (2011), 'A Competition Regime For Growth: A Consultation On Options For Reform', para 3.17.

<sup>163</sup> BIS (2011), 'A Competition Regime For Growth: A Consultation On Options For Reform', para 3.18.

<sup>164</sup> BIS (2013), 'Enterprise and Regulatory Reform Act 2013: Policy Paper', see: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209896/bis-13-905-enterprise-and-regulatory-reform-act-2013-policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/209896/bis-13-905-enterprise-and-regulatory-reform-act-2013-policy.pdf)

<sup>165</sup> BIS (2013), 'Enterprise and Regulatory Reform Act 2013: Policy Paper', Introduction.

<sup>166</sup> BIS (2013), 'Enterprise and Regulatory Reform Act 2013: Policy Paper', para 3.3 (iii).

- 8.22 The CMA has no justification, no legal basis and no need to recommend a 'supplementary MIR'. To do so will deprive the sector of the certainty that they are entitled to expect at the conclusion of a lengthy and costly market investigation.

*Timing of future MIR*

- 8.23 Further, the uncertainty is compounded by the PDR which is ambiguous and potentially inconsistent about when a future MIR might take place. The recommendation to carry it out '*at the [CMA's] earliest convenience*' does not seem compatible with the CMA's wish to carry out an annual review, which envisages a period of one or more years' monitoring, following a return to stability after the Covid-19 pandemic.
- 8.24 In our view, the earliest opportunity for a 'supplementary MIR' would be after 2023 since 2022 is the earliest potentially first 'normal' year to be considered given the impact and trajectory of Covid-19. If 2022 turns out to be a 'normal' year (which it may not), the CMA will need a minimum of two years' data to understand whether the market has arrived at some form of stability and to understand trends that might inform a decision to make a further MIR). Based on experience elsewhere, a resurgence of Covid-19 is likely to persist through the first part of 2021 (and very possibly beyond). We would therefore expect the data for 2020 and 2021 to be abnormal and projections show that the years following the pandemic (assuming a vaccination is available) will have abnormally low death rates (with the pandemic 'bringing forward' the deaths of people who would have ordinarily been expected to die within a few years). The business impact of a prolonged disruptive period, including the potential for business failures, changes in business model and adaptations to new customer behaviours are all likely to persist for some years after the end of the pandemic, before a new, stable market situation is reached.

*The evidence as it stands does not, in any event support the need for price regulation*

- 8.25 In the context of a sector where consumers confirm, time and again, that they are very satisfied with the service they receive, where there is a range of market participants, sustained entry, and where prices and profitability are dropping substantially, additional, more onerous remedies, including price regulation, would be disproportionate.
- 8.26 In any event, the evidence base cited in the PDR as it stands does not support the introduction of price controls. We have pointed out a large number of material errors and shortcomings in the CMA's evidence base<sup>167</sup> (which the CMA has not engaged with) including:
- (a) Serious limitations in the CMA analysis, which fails to provide an accurate description of the nature of competition in the funerals market. We have provided evidence to the CMA showing that:
    - (i) competition takes place at a local level and is very heterogeneous with multiple providers competing with Co-op, Dignity and Funeral Partners;
    - (ii) the competition is best characterised by longer-term effects (as opposed to short term effects that can be identified in a before and after analysis in a short window of time);

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<sup>167</sup> See, for example section 2 of the Co-op Response to Remedy Options for Regulating the Price of Funeral Director Services at the Point of Need (2020)

- (iii) new entry and competition by independents were very important factors in explaining larger providers' long-term at-need volume and market share declines;
- (iv) competition has had a significant impact on funeral director prices market-wide; and
- (v) non-price elements (e.g. type of funeral director, quality of service) are essential to explain consumer behaviour and preferences and are the main driver of the wide range of funeral options and the bespoke offerings.

The CMA has disregarded all of this evidence and, as it acknowledges, it has been unable to obtain further information due to the impact of Covid-19.

- (b) The existence of evidence of substitution between Simple and other funeral packages within Co-op branches shows how consumers react when funeral packages are presented clearly alongside each other, and price information is transparent. The CMA has acknowledged the existence of this evidence in the PDR but has chosen to disregard it in when drawing overall conclusions.
- (c) Our reduction in market share (and particularly the significant reduction in volumes of traditional funerals) over the last 5 years demonstrates that consumers are choosing other providers of at-need funerals more often than in the past, which in itself is clear evidence of switching across funeral directors.
- (d) The CMA Working Paper on Funeral directors price dispersion analysis suffers from multiple shortcomings in terms of the data relied on and the failure to control for factors that explain price differences between funeral director providers. As such this paper cannot be used to characterise the degree of price dispersion that is due to lack of competition.
- (e) The CMA Working Paper on Funeral directors pricing levels and trends points to changes in the market that have resulted in price pressure in the last three years. In particular, considerable parts of the market have experienced a decrease in real average revenue per funeral since 2017. The CMA analysis points to a problem in the burial and cremation disbursements market where prices have increased at a higher rate than the professional fees.
- (f) The CMA's findings on profitability would be different if it refined the analysis in line with our response to the profitability analysis and the cost of capital Working Papers. In particular, we consider that the cost of capital is underestimated and that the return on capital employed for large providers is overestimated. Moreover, the CMA would observe downward pressure on the profitability in the market, particularly, over the last two years, i.e. 2018 and 2019. Dignity's preliminary annual results of 2019 show that its unadjusted EBIT margin for funeral services has further decreased in 2019. Our profitability of at-need funerals declined sharply in 2019 and is expected to decline significantly in 2020. The financial position of funeral directors after responding to the coronavirus pandemic is likely to be very significantly altered making the CMA profitability analysis appear irrelevant to the likely position at that time.
- (g) The CMA's consumer survey findings show that consumers are satisfied with the service, both in terms of quality and prices. The results also show that the prices are



sufficiently transparent. It shows that consumers are aware of the possibility of switching, and there are no barriers to switching.

- 8.27 The CMA's international comparisons study came to the same conclusion as the Oxera paper on international comparisons: there are no instances of price regulation of funerals anywhere in the world. We would expect that the CMA would present significantly stronger evidence than it has provided so far to be the first competition market authority to introduce price regulation in the funerals market, which is such a dynamic market with a large number of players, diverse business models and heterogeneous products. Instead, the evidence points to a broadly well-functioning market, indicating that the introduction of a price control for at-need funerals would be disproportionate and unfounded.

*The current thinking on design of price regulation would result in an unworkable remedy with unintended consequences more severe than the harm they attempt to remedy*

- 8.28 In Appendix W, the CMA has set out its current thinking<sup>168</sup> on the characteristics of a future price control, which it envisages would:
- (a) apply to all providers of funeral director services in the United Kingdom (UK). However, we have also considered an approach which would limit the application of price control regulation to certain providers of funeral services;
  - (b) apply a maximum price to a defined 'benchmark' package of funeral products and services;
  - (c) be set by reference to available pricing data for comparable products and services provided across the UK and analysed against inflation and cost/profitability data;
  - (d) be set either for the UK as a whole, for each devolved nation or regionally; and
  - (e) include an obligation to pass intermediary costs (such as cremation or burial fees) onto customers without a mark-up/profit margin added to those costs.

- 8.29 As we have set out above, there is no basis for any future MIR to take this as its starting point and any new MIR would need to both consider the evidence to support any finding of an AEC and the proportionality and appropriateness of future remedies package afresh. We have nevertheless commented on the proposed price regulation package, in the context of the current market, as follows:

*maximum price for a defined 'benchmark' package consisting of funeral products and services*

- (a) As previously submitted,<sup>169</sup> we have concerns about the principle of defining a 'benchmark' funeral package which would, in all likelihood become the 'default' package for most of the market which would be at odds with attempts to introduce greater customer choice through information and transparency remedies. The single benchmark package would become a focal point for customers and contrasts with consumers' desire for a personalised funeral in which they are able to say their last goodbye or celebrate their loved one's life in line with their wishes and personal values.

<sup>168</sup> CMA (2020), 'Appendix W to the Provisional Decision Report: Remedies', para 82.

<sup>169</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, para 3.42.

- (b) As previously submitted,<sup>170</sup> the introduction of price control carries the risk of a large number of unintended consequences that would be detrimental to consumers. We believe that the CMA has underestimated the likelihood and scale of the unintended consequences it has raised<sup>171</sup> and that it has not considered many others.<sup>172</sup>
- (c) There is a lack of clarity about how the benchmark price would be set<sup>173</sup> with risks to consumers from the benchmark being set too high or too low. There is a lack of clarity over the treatment of disbursements,<sup>174</sup> and the treatment of burials and cremations.<sup>175</sup>
- (d) The proposed benchmark contains no reference to the level of standard to be provided for each of the product and services within the package, such as the required level of customer care, the level of care for the deceased, any maximum number of days in care, the standard of the vehicle or the standard of customer-facing facilities, nor does the CMA specify the type of hearse, coffin or limousine or any maximum number of hours to arrange, provide and conduct the funeral.
- (e) We do not understand how, and the CMA has not set out the basis on which it concludes that *'it would be feasible to determine an initial maximum price level for a benchmark package and that we could develop a viable methodology for this'*.<sup>176</sup> There is no analysis to support its assertion that *'the issues raised by parties can be addressed'*.<sup>177</sup> We fundamentally disagree with the CMA's assertion that *'there is no evidence'* to suggest that an effective price control regime could not be designed and implemented or that such a regime would be disproportionate.<sup>178</sup> The CMA has simply not engaged with the material evidence which has already been presented to it in response to the Working Papers and by its own admission, remedies design would require substantial further market engagement. In appearing to conclude now that price regulation would be possible, effective and proportionate, the CMA is improperly pre-empting any such future consultation and assessment.

## Price, commercial information and transparency remedies

### Customer information

- 8.30 We do not understand the wording in 9.30 (b) which states that *'the crematorium operator must provide... the total price of the service as specified, **which should reflect, as much as possible, the final price that customers are likely to pay for their chosen service**'* (emphasis added). Customers require reliable and final pricing and it is unclear why the text highlighted in bold has been added to introduce an element of uncertainty/confusion. The bold text should be deleted from the final package of remedies.
- 8.31 In paragraph 9.41 of the PDR, the CMA asks **what price information should be made available to customers?** The CMA proposes (at paragraph 9.47 of the PDR) that funeral directors must provide customers with a full price list of the services that they offer, either when those services are offered in addition to one of the funeral packages specified in paragraph

<sup>170</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, para 4.2.

<sup>171</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, para 4.2.

<sup>172</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, para 4.3.

<sup>173</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, para 5.

<sup>174</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, paras 6.2-6.6.

<sup>175</sup> Co-op (2020) Response to Regulating the Price of Funeral Director Services at the Point of Need, paras 6.16-6.17.

<sup>176</sup> CMA (2020), 'Appendix W to the Provisional Decision Report: Remedies', para 83.

<sup>177</sup> CMA (2020), 'Appendix W to the Provisional Decision Report: Remedies', para 92.

<sup>178</sup> CMA (2020), 'Appendix W to the Provisional Decision Report: Remedies', para 92.

9.24, or where a customer is choosing to specify a funeral to their own personalised requirements. Co-op response:

- (a) We are concerned that selectively presenting packages i.e. to identify the '*most commonly sold*' package (as set out at 9.24-9.25 of the PDR), may put pressure on customers to purchase that package, even if it is actually more expensive than other packages offered or does not reflect customer needs. There is a risk of funeral directors selecting or encouraging a more expensive package as their '*most commonly sold*' package. As the CMA has acknowledged, the way in which funeral directors frame their discussions with customers can affect customer choices dramatically.<sup>179</sup> We believe that framing the options in this way is likely to inadvertently deter some customers from choosing better value options where they may well be well suited to their needs.
- (b) As previously submitted,<sup>180</sup> the funeral director may not be in a position to provide certainty over a wide range of costs or important elements of the service including the length of time available for a service and the availability/choice of slots (with consumers generally less keen on services which are early or late in the day).
- (c) We believe that the provision of terms of business (as set out in 9.27 and 9.28) is good practice; however, we have concerns about the obligations on funeral directors to provide information relating to crematoria operators fees (paragraphs 9.28 (b) and (c)) notwithstanding the obligation on crematoria operators to provide this information to funeral directors. This obligation will be onerous for large, centralised funeral directors who will need to collate this information and input it into a central directory before it can be used in individual homes. We request that the final remedies package adds detail to the obligations on crematoria operators (at 9.31) about how (i.e. specifying the provision of electronic information in a standardised format updated regularly on a scheduled basis (so that funeral directors do not have to deal with the sporadic provision of information)) and when (i.e. how far in advance) such information will require to be communicated to funeral directors, together with an exemption from 9.28 (b) and (c) for funeral directors who have not been provided with this information by crematoria operators.
- (d) Whilst in general, 30 minutes cortege drive time is an appropriate metric for identifying the appropriate crematoria for which information has to be provided there will be locations, particularly in rural areas, where there is no crematorium in that distance. We would suggest 30 minutes for urban areas and 45 minutes for rural; where there is no crematoria within these drive times, we suggest that information be provided for the two nearest crematoria (regardless of distance).

8.32 In paragraph 9.41 of the PDR, the CMA asks **whether the price information should be provided in a standardised format?** The CMA proposes (at paragraph 9.48 of the PDR) that the provision of price information to customers in a standardised format would make it easier for customers to assess and compare. Co-op response:

- (a) Notwithstanding our comments about the inadequacy of assessing price without quality and service, the standardisation of format will enable like-for-like price comparison. As we have said, (and as is referred to at paragraph 9.49 of the PDR) a '*standardised check box approach*' will reduce innovation and so we agree with the CMA's comments at paragraph 9.50 of the PDR that flexibility in design is important to enable innovation.

<sup>179</sup> CMA (2020), 'Provisional Decision Report', para 5.29

<sup>180</sup> Co-op (2020) Response to Working Paper on Quality Regulation Remedies, para 2.13

Ultimately, funeral directors should be permitted to frame their offers as they consider commercially appropriate, but also provide the same information in a form that allows direct comparison with others.

- (b) Standardisation of format will be essential to ensure that funeral directors are able to manage this information and present it accurately to customers.
- (c) Standardised/defined terminology will be necessary to ensure that customers are well placed to compare funeral directors' services.

8.33 In paragraph 9.41 of the PDR, the CMA asks **when and how the price information should be provided to customers?** The CMA proposes (at paragraphs 9.51 and 9.51 of the PDR) that price information should be made readily available by funeral directors and crematorium operators at their premises and on their websites (if they maintain one) in a clear and prominent manner and that funeral directors and crematorium operators should be required to provide price information to customers prior to the arrangement meeting. Funeral directors and crematorium operators should only be required to provide price information at the first point of contact, or at any other time prior to the arrangement meeting, if this information is requested by the customer. Co-op response:

- (a) We are broadly supportive of this. It would be inappropriate for this information to be presented at the first point of contact (where the priority is the removal of the deceased) but this information should be provided prior to the arrangement meeting. We would suggest that where customers ask for information at an early stage, this could be provided by directing clients to funeral director websites and asking them to confirm at the start of the arrangement that they have had a chance to review the price information.
- (b) The caveat '*and on their websites (if they maintain one) in a clear and prominent manner*' may have unintended consequences i.e. it would permit funeral directors to fall outside the ambit of the remedy by choosing not to have a website. The provision of information *prior* to first contact is important and so we would suggest that if a funeral director does not have its own website it should be obliged to present the information online for example in a trade industry directory such as the one operated by the NAFD<sup>181</sup>.

#### Disclosure of ownership & prohibition of referral arrangements and solicitation

8.34 At paragraph 9.32 of the PDR, the CMA has provisionally decided to require funeral directors to disclose to customers (a) the ultimate owner of the business; (b) where a funeral director has any interest in a PCW; and (c) where a funeral director makes a charitable donation/other form of payment unrelated to a cost incurred. Paragraph 9.33 provisionally requires funeral directors to make this information available at premises and on websites. We welcome these measures which we believe will promote transparency.

8.35 In paragraph 9.41 of the PDR, the CMA asks **whether the arrangements, exchange of services and payments described in paragraph 9.32(c) and 9.34 should be disclosed or prohibited?** The CMA proposes (at paragraph 9.55) the prohibition of arrangements and solicitation. Co-op response:

- (a) The proposal to retrospectively prohibit any arrangements with hospices, care homes or similar institutions<sup>182</sup> directly impacts existing and proposed arrangements that we

<sup>181</sup> <https://funeral-directory.co.uk/>

<sup>182</sup> CMA (2020), 'Provisional Decision Report', para 9.251(a) and 9.252.

have negotiated and believe are ultimately beneficial to customers. Our response to the Working Paper on Intermediaries explained the benefits to hospices of having a trusted partner to support patients and their families to give advice and start conversations about funerals early (where that is appropriate). Providing a family with a list of contact details, without some form of sign-posting, (which is all many providers feel able to do), does not meet the need of families seeking more detailed guidance and support to help manage a potentially overwhelming emotional and administratively burdensome process. As explained in our response to the Working Paper on Intermediaries, the relationship with St Christopher's is intended to sign-post patients and families to a trusted partner. The commercial relationship is disclosed and is entirely transparent to the customer at the outset. If they wish to, patients and their families will have the opportunity to speak to a local Co-op Funeral arranger to discuss next steps, planning, pricing without the pressure of having to make an immediate purchase. As a charity, St Christopher's have their own high standards and compliance obligations. Charities must comply with rules set out in the Fundraising Code, particularly section 7 which deals with 'Professional fundraisers, commercial participators and partners'.<sup>183</sup> These rules require charities to carry out due diligence on commercial partners and ensure there are no conflicts of interest. The rules require contracts with commercial partners to be in writing and set out a series of minimum terms and monitoring and compliance obligations. The trustees of Charities will be guided by the Charity Commission Guidance CC20<sup>184</sup> in fulfilling their responsibility to comply with their duties under the Charities Act 2011, specific fundraising law and to follow recognised standards (protecting their charity's reputation and encouraging public trust and confidence). The consequences of not doing so may lead to regulatory challenge by the Fundraising Regulator or the Charity Commission with sanctions including fines, trustee liability and reputational damage. Without any specific regulation on the funeral service side, our commercial arrangement with St Christopher's conforms to the high standards needed to comply with charity and fundraising law.

- (b) We believe that clear and upfront disclosure of such arrangements will be sufficient to mitigate any AEC without losing the consumer benefits from an openly disclosed, non-exclusive arrangement that is sensitive to the customers' needs at a difficult time. Transparent relationships between funeral directors and intermediaries such as care home, hospices and hospitals are of benefit to consumers, enabling them to start discussions early around end of life planning. We believe it would be disproportionate and damaging to customers to prohibit the ability of funeral directors to make commercial arrangements with third parties.
- (c) Putting in place a prohibition on transparent payments when donations continue to be permitted may well have unintended consequences. Funeral directors may switch to making regular donations to hospices or care homes, which are not explicitly linked to referrals but end up having a similar effect in a much less transparent way. Ultimately, Co-op appears to be singled out for being open and above board about these relationships, while others, adopting a more opaque approach, are simply required to make information available at premises and online about the donations.

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<sup>183</sup> <https://www.fundraisingregulator.org.uk/code/working-with-others/professional-fundraisers-commercial-participators-and-partners>

<sup>184</sup> <https://www.gov.uk/government/publications/charities-and-fundraising-cc20/charities-and-fundraising>

- (d) It is unclear how the prohibition would work within groups which carry out a range of services. For example, the TEHY Group<sup>185</sup> offers home care, medical care and funeral care (amongst other services).
- (e) In the PDR, the CMA has failed to establish that a prohibition is necessary and proportionate or that the suite of remedies we set out in our Response to the Working Paper on Information and Transparency Remedies<sup>186</sup> would not adequately address any concerns. In paragraph 9.55 of the PDR, the CMA sets out three reasons for the prohibition, yet no evidence has been cited in support of these reasons; in the absence of any evidence we do not understand the justification behind this recommendation. The CMA must provide evidence of customer detriment for which such an interventionist remedy is proportionate: as it stands, there is no evidence put forward to support such a remedy.
- (f) We note that SAIF's voluntary prohibition is quoted in paragraph 9.56 although this does not provide any evidence of customer detriment. The statement is selective and unbalanced: no other trade body has imposed such a rule and the NAFD removed its prohibition (in that case to permit commercial development of online price comparison services for funerals). PCWs should promote all providers equally (without favour to those who are related parties) and all relationships should be fully transparent. We would broadly support the application of the findings from the CMA Digital Price Comparison Tools Market Study.
- (g) The examples set out in paragraph 9.57 in relation to conveyancing, digital comparison tools, personal injury claims and private healthcare all have very different and specific contexts for the concerns in those markets and we struggle to see the applicability of these examples to the funeral services market (since no evidence has been provided to link these anecdotal examples to any perceived customer detriment).
- (h) Likewise, the reference to the position in France<sup>187</sup> has been given without any reference to customer detriment in the UK and is evidentially weak. We have been unable to review the legislation being referred to (since the PDR fails to provide a reference); indeed the CMA qualifies its statement by saying '*...we understand that in France...*'<sup>188</sup>. Furthermore, the example of French legislation is without any context of France's consumer protection and other relevant laws and parties have not been given the opportunity to consider the relevance of those aspects of the French legal system to the Market Investigation.
- (i) The CMA's concerns in relation to vulnerable people<sup>189</sup> are noted; however, we submit that the suggestions we have made (referred to above and cited in the PDR<sup>190</sup>) would have significant benefits and would offer a far more proportionate remedy than the proposed prohibition.
- (j) We have called for a prohibition on Coroners contracts being tendered for at below cost (which would remove the incentive for soliciting for funerals)<sup>191</sup> which we believe would be a more effective remedy for any AEC;<sup>192</sup> however, subject to the concerns set out

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<sup>185</sup> <https://www.tehycare.com/>

<sup>186</sup> CMA (2020), 'Provisional Decision Report', para 9.44.

<sup>187</sup> CMA (2020), 'Provisional Decision Report', para 9.59.

<sup>188</sup> CMA (2020), 'Provisional Decision Report', para 9.59.

<sup>189</sup> CMA (2020), 'Provisional Decision Report', para 9.58.

<sup>190</sup> CMA (2020), 'Provisional Decision Report', para 9.44.

<sup>191</sup> Co-op (2020) Response to the Working Paper on Intermediaries, paras 2.1 and 3.1.

<sup>192</sup> Which the Co-op does not believe to have been established.

being addressed, we support the proposed prohibition on solicitation. In our view this is different in context to the position in care homes and hospices, as the balance between the potential benefits of early planning and potential detriment to customers is very different in that environment, where individuals are reacting to immediate circumstances and might be unduly influenced. It is unclear how the CMA proposes to monitor/ enforce the prohibition on solicitation through coroner's contracts and police contracts and we would welcome clarity on this. Standardised guidance (including standardised terminology/ defined terms) will need to be provided to assist funeral directors. As previously stated,<sup>193</sup> families contacting the Co-op in relation to a coroner's contract often ask the team collecting the deceased for advice about what happens next. It is important that families immediately receive the necessary information and we always provide it when asked (the choice of funeral director always remains with the customer). We do not want to inhibit our colleagues from answering questions or providing information requested. There is a fine line between proactive advice and solicitation and we feel that the industry will benefit from clear guidance and standardised terminology.

- (k) It may prove difficult in practice to define charitable donations. For example, would there be a requirement to disclose donations in kind or of time? If so, how would a funeral director define and disclose personal volunteering activities in a way that is transparent for consumers? Co-op colleagues regularly volunteer for a range of charities. Guidance on this will be necessary.

#### Method and timing of implementation

- 8.36 We agree that that the price, commercial information and transparency remedies should apply and that an Order is the most appropriate method of implementation. Three months from the date of the order is insufficient to implement the remedies; as set out above, we will need sufficient time to collate crematoria information (for which we will be dependent on crematoria operators to provide). We believe that it will take a minimum of 12 weeks from the receipt of all crematoria information before we will be able to comply with the remedies.<sup>194</sup> Updating third party information in the future will require less time; the final package of remedies should clearly set crematoria operators' obligations to provide the information to funeral directors at least 12 weeks before the effect of any changes and at regularly scheduled periods to avoid sporadic provision of information.

#### Monitoring & Enforcement

- 8.37 We are concerned with the proposal set out in paragraph 9.65 of the PDR to exempt smaller operators (those with fewer than ten branches) from annual compliance reporting. Such an approach will mean that the vast majority of funeral directors are not reporting on their compliance, creating a risk of inconsistency across the market and a monitoring exercise that will provide the CMA with an incomplete and inaccurate picture of the market as whole. The CMA says that this will not preclude the CMA from requesting reports and we understand the practical difficulties of requiring every funeral director to report; however, the CMA has made an arbitrary decision to select bigger operators on the basis of branch numbers. We are aware of one funeral director who carries out circa 1,500 funerals per year from a single site, while the average Co-op branch will carry out circa [X] funerals per year. Determining operator size by the number of branches will not accurately capture the most significant operators (and would exclude those operating largely online). A far better metric would be to determine size based on

<sup>193</sup> Co-op (2020) Response to the Working Paper on Intermediaries, para 3.3.

<sup>194</sup> Administration will be significant including data checks, resolving issues, scheduling the upload into standardised software releases etc.

revenue (excluding disbursements): our view of the future development of the funerals market is that funeral directors will become less reliant on branch networks (as a result of greater online, telephone ordering etc). Determining operator size by revenue (excluding disbursements) will help to future-proof this remedy and reduce the risk of viewing the market on a backward-looking basis.

- 8.38 As stated above, the CMA has identified more serious concerns in the crematoria market and greater customer detriment. It is therefore very difficult to understand why the CMA has decided to monitor the funerals sector but not the crematoria sector. The CMA is proposing obligations on crematoria to disclose prices: it would not seem to require significant extra effort for crematoria prices to be shared with the CMA and monitored in the same way as the CMA is proposing to monitor funeral services.
- 8.39 Furthermore, the CMA should be more ambitious in monitoring compliance in a market where fewer than 10 branches is the norm<sup>195</sup> and propose that having determined 'smaller' funeral directors, the CMA sets a minimum percentage of small funeral directors which it will sample each year. Such an approach is taken by the Law Society of Scotland in respect of monitoring and enforcement of Continuing Professional Development (**CPD**) requirements: all practising solicitors in Scotland are required to comply with the CPD requirements and each year 5% are contacted and asked to verify their compliance.<sup>196</sup>
- 8.40 Finally, the imposition of a monitoring regime during a time of severe uncertainty and downward pricing pressures caused by the Covid-19 pandemic will be challenging. We would ask that this be implemented in a flexible way with understanding of the severe pressure on funeral directors at this time.

#### Cost of Implementation

- 8.41 The two tier approach to monitoring will mean higher administrative costs for larger businesses. The PDR does not provide sufficient detail to estimate the cost of compliance but we do not believe that the aggregate costs will be 'insignificant' as stated in the PDR.<sup>197</sup> Any monitoring regime requires a consistent simple and standardised approach to monitoring based on electronic submissions. As we have repeatedly stated, funeral services are not commodities and monitoring needs to include some basic customer satisfaction metrics. In general, whilst we have no objection to monitoring in principle, it is unclear to us what the CMA expects to achieve with this exercise, or what it might do with this data. As it stands, the information it proposes to gather would give only a very basic snapshot, will ignore important features of the market and could not form the basis for further action. A decision to undertake a further MIR, for example, would require a broader consideration of the evidence of how the market was working at the relevant time.

#### **Quality remedies**

- 8.42 Subject to comments below, we broadly support the introduction of remedies to regulate and monitor the quality of funeral director services. We have previously submitted that a regulatory regime with clear standards, underpinned by effective monitoring and enforcement by an

<sup>195</sup> CMA (2020), 'Provisional Decision Report', Table 2 (para 2.81) shows that 98.6% of funeral businesses have fewer than 10 branches).

<sup>196</sup> <https://www.lawscot.org.uk/media/361235/cpd-requirements.pdf>

<sup>197</sup> CMA (2020), 'Provisional Decision Report', para 9.66.



appropriate body, which also collects and disseminates information to customers is both necessary and likely to be proportionate.<sup>198</sup>

- 8.43 We are very concerned with paragraph 9.95 of the PDR which implies that the CMA is content for these measures not to be implemented until after a further market investigation reference. As the CMA sets out in paragraph 9.99 of the PDR, these remedies are necessary and it therefore seems clear that they should be implemented without delay. As mentioned above and set out in detail below, we are strongly opposed to the concept of a supplementary MIR. The CMA is under a duty to implement remedies that are proportionate and effective and to implement the least onerous remedies. The concept of delaying the implementation of quality remedies until the imposition of more onerous (excessively so) price control remedies is wrong and it misses the opportunity to understand and measure the impact of quality control remedies before considering alternative remedies. It also risks further prejudice to quality as transparency of prices increases. Without securing minimum quality standards, increased price competition, properly prompted by greater transparency will likely lead some providers to further compromise their standards, where these are not visible to customers.
- 8.44 It is unclear what timeframe the CMA is proposing at paragraph 9.101 of the PDR. The wording is aspirational in tone but the wording 'over time' and 'could include' are very vague and makes it impossible to plan or estimate the potential costs. Paragraph 9.102 talks about the introduction of a registration and testing regime as 'the first step' and it is not clear how this would transition into later steps. Is the CMA proposing that the first step would not include quality standards to be inspected against or no penalties etc? Our expectation is that a fit for purpose quality standards regime will require:
- (a) a process of annual or biannual registration of funeral directors and premises;
  - (b) a requirement to meet and continue to abide by the obligations set out in a licence; and
  - (c) an inspection regime to support licensing, backed by the ability to impose appropriate sanctions, including financial penalties.
- 8.45 We recognise that design of such a regime will take consultation and consideration and that some reasonable transitional period to this regime would be required. It is therefore all the more important that the process should begin as soon as practicable, so that a much needed and effective regime can be put in place without delay.
- 8.46 As we have previously submitted,<sup>199</sup> and as required by the Guidelines for Market Investigations (CC3) the proposed elements of any remedies must interact and work together. Remedies that increase the quality of services must be implemented alongside and at the same time as remedies to increase information and transparency so that customers can clearly see the links between quality and price. The proposals in the PDR may lead to a significant gap between the implementation of transparency remedies and quality remedies. There is a very real risk that quality is reduced as Funeral Directors focus on headline prices.
- 8.47 In paragraph 9.103 (a) of the PDR, the CMA asks what **would be the appropriate model for quality regulation and the balance between outcomes-based and rules-based standards?** The CMA proposes (at paragraph 9.110 and 9.111 of the PDR) a 'predominantly outcomes-based regulatory model' and the use of a rules-based approach in areas where there are specific

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<sup>198</sup> Co-op (2020), 'Response to Working Paper on Quality Regulation Remedies'.

<sup>199</sup> Co-op (2020) Response to Working Paper on Quality Regulation Remedies, para 1.2.

concerns or where there is a greater risk of non-compliance or circumvention under a principles-based approach'. Co-op response:

- (a) In our previous submissions, we have been clear that an outcomes based regulatory regime has material advantages but that it requires an activist regulator prepared to engage with the sector and give published guidance. We have also stressed that the appropriate level of flexibility is key. We would expect to work with any future regulator to achieve the right balance of guidance and prescription.

8.48 In paragraph 9.103 (b) of the PDR, the CMA asks **which of the services provided by funeral directors should be included under the scope of a quality regulatory regime?** The CMA proposes (at paragraph 9.112-9.113 of the PDR) a focus on back of house standards (for funeral directors only not for crematoria) and (at paragraph 9.115 of the PDR) a focus on the collection and transport of the deceased and care, storage and preparation of the deceased. This is developed further at paragraph 9.116 of the PDR and in Appendix W (particularly Table 1.) Co-op response:

- (a) Our comments on the proposals set out in Appendix W are set out below.

Back of house standard	Principle	Desired outcomes	Co-op comments
Collection and transport of the deceased	The deceased is treated with respect and dignity at all times during the collection from their place of death and transport to the funeral director's premises	<ul style="list-style-type: none"> <li>• Staff responsible for the collection and transport of the deceased are trained to do so in a manner that prioritises the respect and dignity of the deceased</li> <li>• Staff receive appropriate consent from the bereaved before collecting and transporting the deceased</li> <li>• The deceased and their possessions are appropriately protected/secured during collection and transport</li> <li>• Vehicles and equipment used for the collection and transport of the deceased are fit for purpose and regularly inspected</li> <li>• The funeral director has suitable procedures in place for the identification of the deceased</li> </ul>	We note that the Principle and Desired outcomes are identical to those set out in the Quality Remedies Working Paper (which we agreed with <sup>200</sup> ).
Care, storage and preparation of the deceased	The respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<ul style="list-style-type: none"> <li>• Care, storage and preparation of the deceased complies with the HSE's guidance on managing the risk of infection when handling the deceased</li> <li>• The funeral director has, or has access to, via a third party, sufficient, clean, secure and refrigerated storage facilities that</li> </ul>	<p>We note that the Desired outcomes have altered since being set out in the Quality Remedies Working Paper as follows:</p> <p>(a) Bullet 2 (refrigeration has been added);</p> <p>(b) Bullet 3 (individual storage) has been added; and</p>

<sup>200</sup> Co-op (2020), Response to Working Paper on Quality Regulation Remedies, para 4.1.

		<p>reflects anticipated body storage requirements</p> <ul style="list-style-type: none"> <li>• The deceased are stored individually*</li> <li>•Storage capacity includes contingency arrangements for a temporary increase in storage requirements</li> <li>• The bereaved is informed of where the deceased is stored</li> </ul>	<p>(c) There is no longer a desired outcome that 'Size of body storage facilities reflects anticipated body storage requirements'</p> <p><u>Co-op Comments:</u></p> <p>Re (a) we have strongly advocated for access to refrigeration to be mandatory<sup>201</sup> and hopes that the detailed provisions will contain the protections we advocated i.e.</p> <ul style="list-style-type: none"> <li>• Funeral directors that have a number of funeral homes should ensure each home has access to a reasonable number of refrigeration spaces per deceased within a short distance and be transparent to customers about where the deceased is resting.</li> <li>• Larger operators should ensure that funeral homes have access to a larger availability of refrigeration and capability of spaces i.e. bariatric capability within a 45 minute drive time.</li> <li>• Where a Funeral Director uses a third party refrigeration provider, we believe it is appropriate that such services should be fully disclosed to the client to ensure that the client is aware of where the deceased will be cared for and kept.</li> <li>• All third party refrigeration providers should provide evidence of robust disease control and management processes to ensure correct identification of the deceased throughout their journey in care. We believe it is appropriate that a written agreement between the Funeral Director and any third party refrigeration provider incorporating SLAs should be mandatory.</li> </ul> <p>Re (b) We view the dignity of the deceased as paramount but as previously submitted<sup>202</sup> there are alternative forms of respectful refrigeration in use which may not include use of compartment or trays – for example, a cold room where encoffined deceased may be placed, as the CMA observed in Co-op's Reading mortuary. By prescribing individual storage, there is a risk that such options (or other innovations) may be inadvertently excluded. We urge the CMA to consider this and be less prescriptive about the need for individual compartmentalisation (which will necessitate further unnecessary capital expenditure in high quality facilities which securely store the deceased in a dignified way).</p> <p>Re (c), we do not understand why the CMA has removed the Desired Outcome 'Size of body storage facilities reflects anticipated body storage requirements'. In the Quality</p>
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<sup>201</sup> For the reasons set out in Co-op (2020) Response to Working Paper on Quality Regulation Remedies, paras 4.3-4.5

<sup>202</sup> Co-op (2020) Response to Working Paper on Quality Regulation Remedies, para 113(c).

			Remedies Working Paper, the CMA asked whether the ratio of one refrigeration space for every 50 deceased persons on average was an appropriate ratio. We submitted that such a ratio was insufficient (and that 1:25 was a more appropriate ratio) <sup>203</sup> . We are surprised and disappointed to note that the CMA has neglected to set standards governing this very important aspect of back of house quality and urges the CMA to include minimum storage standards in its final remedy package.
Premises, facilities and equipment	All premises, facilities and equipment are suitable for ensuring that the respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<p>Facility design</p> <ul style="list-style-type: none"> <li>• Premises, facilities and equipment are secure and accessible by authorised persons only</li> <li>• Premises, facilities and equipment are clean, well maintained and regularly inspected</li> <li>• The funeral director has, or has access to, premises, facilities and equipment can accommodate all body types and care services offered by the funeral director</li> </ul> <p>Embalming (<i>The requirements in relation to embalming are only intended to apply where the funeral director has embalming facilities at its premises</i>)</p> <ul style="list-style-type: none"> <li>• Embalmers employed or otherwise engaged by the funeral director are appropriately qualified (eg certified by the British Institute of Embalming (BIE))</li> <li>• The funeral director has a separate area for embalming</li> <li>• Embalming facilities comply with HSE guidance on managing the risk of infection when handling the deceased and Control of Substances Hazardous to Health Regulations 2002</li> </ul>	We note that the Principle and Desired outcomes are identical to those set out in the Quality Remedies Working Paper (which we agreed with <sup>204</sup> ).
Education and training	All staff have the necessary training and/or education to enable them to carry out their duties with respect		We note that the Principle and Desired outcomes are identical to those set out in the Quality Remedies Working Paper (which we agreed with <sup>205</sup> ). We request that our comments and suggestions <sup>206</sup> be considered further in the drafting of the applicable rules. In brief summary, we have stated that:

<sup>203</sup> Co-op (2020) Response to Working Paper on Quality Regulation Remedies, para 113 (b)

<sup>204</sup> Co-op (2020) Response to Working Paper on Quality Regulation Remedies, para 4.6

<sup>205</sup> Co-op (2020), Response to Working Paper on Quality Regulation Remedies, para 4.7.

<sup>206</sup> Co-op (2020), Response to Working Paper on Quality Regulation Remedies, paras 4.8-4.14.

	and dignity for the deceased		<ul style="list-style-type: none"> <li>• Training and education should be mandatory: the remedy would be ineffective if businesses were permitted to 'opt out'.</li> <li>• Experience or other forms of training could enhance a common 'basic training level across the sector.</li> <li>• Apprenticeships are a good route into the industry enabling practical training and assessment</li> <li>• Accredited training stands as a mark of quality and can bring about benefits to colleagues, the wider business and most importantly the customer.</li> <li>• Any qualification or training offered within the funeral industry needs to cover knowledge, skills and behaviours meaning that colleagues working with the deceased and the bereaved know not only what to do, but understand 'the why' and 'the how'.</li> <li>• Classroom based training has a place in terms of setting the expectations, introducing tools and techniques and sharing best practice/experiences, but it is the constant practice and experience in a live environment that truly builds these skills. This can only be gained via vocational experience.</li> <li>• CPD is essential if colleagues are to deliver exceptional service for customers and therefore in designing an effective remedy. We suggest that for funeral directors and funeral arrangers, the CPD requirements should be 15 hours per year and 10 hours per year for funeral operatives.</li> </ul>
Governance processes and procedures	The funeral director's governance arrangements enable them to monitor and uphold back of house standards		We note that the Principle and Desired outcomes are identical to those set out in the Quality Remedies Working Paper (which we agreed with <sup>207</sup> ).
Complaint handling and consumer redress	The funeral director's complaint handling and consumer redress process enables them to resolve any issues with	<ul style="list-style-type: none"> <li>• The funeral director has a complaint handling process in place which: <ul style="list-style-type: none"> <li>o is easy to use and understand;</li> <li>o provides customers with a variety of methods to submit a complaint;</li> <li>o requires them to investigate and resolve complaints promptly and</li> </ul> </li> </ul>	As previously stated, we agree with the Principles and Desired Outcomes and welcomes the addition of the final bullet which we have advocated for <sup>208</sup> .

<sup>207</sup> Co-op (2020), Response to Working Paper on Quality Regulation Remedies, para 4.15.

<sup>208</sup> Co-op (2020), Response to Working Paper on Quality Regulation Remedies, paras 4.17-4.18

	back of house standards	<p>fairly and, if applicable, provide appropriate redress in a timely manner;</p> <p>o ensures that all staff dealing with complaints are appropriately trained; and</p> <p>o ensures that all information relating to the complaint handling process is available to customers.</p> <p>• The funeral director is a member of an independent ADR scheme</p>	
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8.49 In paragraph 9.103 (c) of the PDR, the CMA asks **how to effectively monitor and enforce compliance with quality regulation?** The CMA proposes (at paragraph 9.118-9.120 of the PDR) business licensing, announced and unannounced inspections and inspection reports including a rating or score. Co-op response:

- (a) A rating/ score system is necessary to ensure that customer satisfaction is considered alongside price but it is vital that there is a well-defined process for a funeral director to challenge a rating or score prior to it being made public. The relative weight of different metrics (for example number of complaints, vs reviews) will also need careful consideration in any rating system.
- (b) To be successful this needs to be underpinned by a clear sense of what compliance is required with published guidelines and what is needed to meet the required outcomes
- (c) There should be a proactive approach to monitoring and regulatory compliance at set time intervals. A risk-based approach could be adopted subject to a clear set of parameters and risk based metrics focused on what is really important for clients. However, every business should be inspected within a set time interval, with higher risk businesses, or those which have not successfully demonstrated full compliance inspected / re-inspected more frequently.
- (d) There are some practical questions such as
  - (i) whether larger operators will be assessed as one entity or on a branch by branch basis (or a combination of both).
  - (ii) the frequency of inspection and/or re-inspection in the event of an issue arising?
  - (iii) Will the inspection regime differ for branches, mortuary embalming theatres or other kinds of premises? Would the condition of vehicles e.g. ambulances be included in the regime?

8.50 In paragraph 9.103 (d) of the PDR, the CMA asks **how to identify who is best placed to operate a registration and inspection regime?** The CMA proposes (at paragraph 9.122) a new regulatory body. Co-op response:

- (a) We agree with the CMA's view that the existing trade associations (i.e. NAFD and SAIF) and other relevant organisations, such as the Good Funeral Guide, should not have any

part to play in relation to the quality regulatory regime. We do not believe that any existing bodies have the necessary capabilities or will be seen as sufficiently independent to succeed as a quality regulator.

### **Quality remedies: method and timing of implementation**

- 8.51 At paragraph 9.124, the CMA proposes a recommendation to UK Government and devolved administrations to establish an inspection regime as a first step in broader regulation regime. As set out at 9.20 above, we are concerned with the wording in paragraph 9.95 of the PDR which implies that the CMA is content for these measures not to be implemented until after a further market investigation reference. As the CMA sets out in paragraph 9.99, these remedies are necessary and it therefore seems clear that they should be implemented without delay.
- 8.52 We accept the difficulties of establishing a new UK-wide body<sup>209</sup> but agree with the CMA<sup>210</sup> that that there will be advantages of such a body or, if not possible, one regulator for England, Wales and Northern Ireland who can work closely with the Scottish Government to ensure consistency of regulatory approach where appropriate.
- 8.53 At paragraph 9.133, the CMA proposes a levy or a licence fee to be paid by funeral directors (if the registration and inspection regime cannot be funded out of general taxation). We note that this would be a decision for Government but wish to reiterate what we have said in previous submissions<sup>211</sup> i.e. that such a model is the 'norm' in analogous regimes and that we would anticipate a levy to be proportionate to the size of the business e.g. based on the number of premises/personnel and/ or number of funerals that might be captured in licence fees (subject to an upper limit). The funding model could also include an element of incentives for compliance.

### **Continuing review of the funerals sector by the CMA**

- 8.54 We are concerned that the CMA is taking another multi-tier approach at paragraph 9.154 of the PDR with the burden of reporting to be borne by a small number of larger operators. As the CMA has stated<sup>212</sup>, 74% of funeral businesses have only one branch, and 2,927 funeral homes (47.4%) belong to business with fewer than five branches so the vast majority of funeral director businesses and nearly half of funeral homes will be omitted from review process. As set out at 8.37 above, a far better metric would be to determine size based on the number of funerals carried out across a funeral director's branch network.
- 8.55 Regardless of how size is determined, the CMA will never compile accurate data about the fragmented funerals market by omitting small, independent funeral directors from its dataset. Again, the CMA should be more ambitious in its review of a market where having more than 5 branches is unusual. If the CMA will not extend the reporting obligations to all funeral directors, it should at the least set a minimum percentage of small funeral directors which it will select for review each reporting period. The CMA's report could easily present the consolidated sample funeral directors' data in aggregated form side by side with data for larger operators.
- 8.56 The additional requirement for funeral directors with more than ten branches is difficult to understand since it will result in a less than comprehensive dataset for review. We don't believe that any funeral directors required to report the total number of funerals and total revenue could not also easily provide the information in aggregate and split as suggested. Reporting the additional information 'based on the funeral director's definition of these types of funerals' is also

<sup>209</sup> CMA (2020), 'Provisional Decision Report', para 9.125

<sup>210</sup> CMA (2020), 'Provisional Decision Report', para 9.128

<sup>211</sup> 116 (b), Co-op Response to Working Paper on Quality Regulation Remedies, March 2020

<sup>212</sup> CMA (2020), 'Provisional Decision Report', para 2.81, Table 2

difficult to understand since it will lead to confusion and inaccurate comparisons. We strongly advocate the use of standard terminology/ defined terms for reporting purposes.

8.57 In paragraph 9.159 (a) of the PDR, the CMA asks **what price information will the CMA require to actively monitor the funerals sector, and how often this information should be provided to the CMA?** The CMA proposes (at paragraph 9.160) that the CMA should be provided with total number of funerals provided each quarter and the total revenue (excluding disbursements) per funeral during that quarter. For funeral directors with ten or more branches, this information must be provided both in aggregate form and disaggregated form, split by simple, standard and other funerals (based on the funeral director's definition of these types of funerals). This will be presented quarterly a new regulatory body. Co-op response:

(a) The information requested at paragraph 9.154 of the PDR is very limited. The CMA's monitoring and reporting will be of limited value and will not for example cover 'consumer outcomes' or 'harmful behaviour' (as set out in 9.153 (a)) and crucially, 'non-compliance' won't yet cover breaches of quality remedies or allow for any reductions in quality to be observed. In general, whilst we have no objection to monitoring in principle, it is unclear to us what the CMA expects to achieve with this exercise, or what it might do with this data. As it stands, the information it proposes to gather would give only a very basic snapshot, will ignore important features of the market and could not form the basis for further action. A decision to undertake a further MIR, for example, would require a broader consideration of the evidence of how the market was working at the relevant time.

8.58 At paragraphs 9.163-9.164, the CMA proposes an annual review of '*consumer outcomes*'; however the proposal makes clear that the CMA only intends to proactively gather information relating to funeral volumes and price. The CMA does not even suggest that it would reactively gather information on quality standards, save only to say it would encourage reporting of '*other harmful behaviour*'. We believe any such exercise will be improperly skewed towards considerations of price and will not adequately identify, much less discourage or address degradations of quality. Such a review process will not form a fair basis for any future MIR and creates a risk that quality is compromised while the focus on quality regulation is potentially a long way off. If a future MIR is to take place, it will, at the relevant time, need to be based on a wider information gathering exercise than could be captured by the CMA's proposed regular monitoring.



## Appendix 1

### Response to PDR, Section 7, Prices

#### 1 Introduction

- 1.1 This document sets out Co-op's detailed submission in response to Section 7 the PDR. Section 7 of the PDR focuses on outcomes, including price, quality, and firm profitability.
- 1.2 We note that overall the analysis proposed in section 7 is very similar to the analysis performed during the market study and put forward again in the Working Papers published in early 2020. There has been no significant change in the analysis and the CMA has failed to address the great majority of the concerns we highlighted in the replies to the Working Papers.
- 1.3 As a consequence, we are still convinced that the evidence base collected by the CMA has numerous flaws that limit the extent to which any firm conclusions can be drawn on the functioning of the at-need funeral director market. In particular, we consider that the lack of robustness characterizing most of the proposed analyses should dissuade the CMA from proposing intrusive remedies (such as price regulation) on the basis of the evidence on outcomes contained within the PDR. Specifically on price regulation, we note that this is a measure of last resort—used only where other interventions have been fully tried and proven ineffective.
- 1.4 To the extent that any conclusions can be drawn from the CMA's analysis, it suggests that the funeral market has changed significantly over the period assessed, with improved outcomes for consumers in recent years and lower profits earned by providers.
- 1.5 We are disappointed that the CMA continues to pursue a purely backward looking analysis, relying on data series dating back to 2006 to draw its conclusions. Such data has limited in a market that has changed significantly over the last five years, and is becoming even less relevant as the impact of the Coronavirus pandemic is absorbed. The CMA must therefore give additional weight to the evidence relating to the most recent time period. A forward looking view is crucial to fully understand the dynamics of the funeral market today and, in particular, design remedies that are appropriate and proportional for the market as it will be in the future and not as it was in the past.

#### 2 SunLife data (7.17 PDR onwards)

- 2.1 We have already discussed in section 2 of our reply to the 'Funeral directors pricing levels and trends' Working Paper that we consider SunLife data to suffer from a number of biases, mainly caused by the combination of a small sample and an inconsistent sampling methodology, that should warn against putting excessive weight on this analysis.
- 2.2 Table 4 in Appendix N illustrates the sample make-up of SunLife data. It can be observed that in every year under consideration (2006-2019) the number of sampled Co-op branches ranged from 6 to 13. This appears insufficient to cover all regions considered in the SunLife analysis for most of the years under consideration<sup>213</sup> as well as to allow, in each geography, a proportionate representation of Co-op price bands.

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<sup>213</sup> It is also unclear whether the sample size of Dignity branches is sufficient to cover all the regions where Dignity operates.

- 2.3 The CMA acknowledges that the SunLife sample presents some issues and explains that, ‘to take account of sampling biases’, results have been re-weighted and a number of adjustments have been tested to see the effect this has on the results.
- 2.4 We agree that weighting data using funeral directors share of supply, the actual distribution of funerals across the country and the actual proportion of cremations and burials are in principle appropriate adjustments. However, we note that:
- (a) with regard to the re-weighting based on share of supply and type of funeral, if the original sample does not capture the full range of regional prices by Co-op and Dignity or if it mis-represents the actual population of “independent and others”, the re-weighting will not be sufficient to correct any biases; and
  - (b) with regard to the re-weighting based on regions, the few Co-op branches in the SunLife are likely to belong to various price bands and to be spread across different geographies. As a consequence, assigning significantly different weights to different regions indirectly assigns different weights to different price bands.
- 2.5 Moreover, referring to the data re-weighting based on share of supply and regions, the CMA states in footnote 858 of the PDR and footnote 15 of Appendix N, that it ‘cannot apply both adjustments simultaneously due to the limitations of the data’, therefore confirming that SunLife data are not suited to construct a sample that is representative of the population of funeral directors with respect to these two key dimensions.
- 2.6 As mentioned above, small sample size is also likely to be problematic for the ‘independent and others’ category, as it is unclear whether the sampled branches included in this category are sufficiently diverse to cover the wide variety of independent business models in the market.<sup>214</sup>
- 2.7 Other potential issues with the SunLife data:
- (a) The sampled funeral directors are not always the same year-on-year, with this problem being larger over the last 2 to 3 years of the analysis due to a decline in the survey response rate and higher level of churn. Furthermore, in Annex 1 of Appendix N the ‘churn checks’ appear to be carried out based on two separate periods (2006-2013 and 2016-2018) due to the lack of availability of branch level data in 2014 and 2015. It is not clear if the branches sampled in each year of the second period were also sampled in the years 2006-2013 or if, as Annex 1 seems to suggest, the second sample is different in its entirety from the first one. If this is the case, it is not clear if and how the replacement has been carried out to guarantee comparability.
  - (b) With the aim of extending the period covered by the SunLife analysis to 2006 and in order to re-weight for share of supply, the CMA had to rely: for Dignity, on ‘approximate funeral volumes’ coming from annual reports; and for Co-op, on a 5-year trend extrapolation based on its annual reports in 2011 and 2012.<sup>215</sup> Since the only inputs for the computation of the CAGR are the values in the first and last year under

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<sup>214</sup> We acknowledge that in paragraph 14 of Appendix N to the Provisional Decision Report the CMA states that ‘although we are not able to test whether it covers a sufficiently diverse range of smaller funeral directors, the results from this analysis closely matches other data on smaller funeral directors in terms of the level and growth in the prices charged by smaller funeral directors’. However, we note: firstly, a lack of a precise explanation on how this quality check was carried out; and secondly, that the low level of detail and disaggregation of the data provided to the CMA by the smaller funeral directors is likely to make it difficult to allow any sample validation.

<sup>215</sup> CMA (2020), ‘Appendix N to the Provisional Decision Report: Funeral Director Pricing Levels and Trends’, footnote 10.

consideration, the more imprecise are the data at the beginning of the period the higher the risk of undermining the results.

- 2.8 Finally, as discussed above, we note that the number of years considered for the analysis has been extended as compared to the 'Funeral directors pricing levels and trends' Working Paper. The period under consideration now covers 14 years (2006-2019), as compared to the 10 years (2010-2019) included in the 'Funeral directors pricing levels and trends' Working Paper. In paragraph 2.12 of our reply to the Working Paper, we already stated that focusing on long term historical evidence going back 5-10 years was likely to cause a misrepresentation of the way the market functions today and its future evolution. We therefore strongly disagree with the decision to further extend the period under analysis to even earlier and less relevant years.
- 2.9 Some of the main reasons why we consider it unwise to focus on such a long period are that:
- (a) older data might have a lower level of accuracy;
  - (b) the longer the interval of years, the more it is likely that the market and its driving forces changed substantially during the period under consideration. Examples of possible changes are: the trend in costs (increase or decrease in the main cost drivers of the industry), the introduction of new and additional elements of costs (such as personnel needing to adapt to an evolving required skill set, new and improved facilities to comply with new standards), changes in the competitive landscape (such as increasing level of competition) and, the evolution of consumer preferences (for example, what is commonly considered a 'minimum standard' required from the funeral director for a certain service might change over time); and
  - (c) by going back to 2006 the CMA analyses a period that is outside the span of years for which it has asked for data from the market players. This makes it impossible for the CMA to cross validate SunLife pricing data for the earliest years using primary information from funeral directors. This applies also to the complementary evidence, such as internal documents, that could potentially be used to explain trends in the earliest years.
- 2.10 We are therefore very concerned that the CMA is failing to acknowledge the importance of more recent trends. A proper consideration of these trends is essential to ensure that any remedies are proportionate to the current and expected future level of competition in this market.
- 2.11 As already stated in our reply to the 'Funeral directors pricing levels and trends' Working Paper, and notwithstanding the above concerns about the quality of the CMA's analysis, we note that some of the findings align with our experience of how the market has evolved over the last few years:
- (a) the price index for independents appears to have fallen sharply in real terms in 2017 and by 2018, back to 2012 levels. Despite a slight uptick in 2019, the index still appears to be well below peak and close to 2013 levels (the real CAGR over 2016-19 was -1.7%).
  - (b) the price index for Co-op similarly went down starting from 2018, and as of 2019, it was just above 2015 levels (the real CAGR over 2016-19 was [X]%).
  - (c) although Dignity appears to have been slower in responding to market pressures, it has nonetheless joined Coop and the independents in reducing prices in 2018-19 (the CAGR over 2017-19 was -2.8%). These trends appear to be confirmed by the CMA's analysis of Dignity's ARF.

2.12 Tables 1 and 2 summarize some key results coming from CMA analysis of SunLife data. It can be observed that, over the last 10 years (2010-2019), combined professional fees grew at a CAGR (real) equal to 0.6%, leading to a £129 difference between professional fees charged in 2019 compared to 2010 (deflated using RPI, base year 2018). Moreover, in the most recent years (2016-2019), the real CAGR fell to a combined -1.6%, bringing the price index back to 2014 levels.

**Funeral director professional fees and disbursement costs, CAGR, real, deflated using RPI index, base = 2018**

	Co-op	Dignity	Independent and others	Combined (weighted by share of supply)
2006-2019	1.4%	2.5%	2.2%	1.7%
2010-2019	0.5%	2.3%	0.8%	<b>0.6%</b>
<b>2016-2019</b>	<b>-1.7%</b>	<b>1.7%*</b>	<b>-1.2%</b>	<b>-1.6%</b>

Source: based on CMA analysis of SunLife data, Appendix N to the PDR, Tables 5 and 6.

Note: \* As explained above, Dignity joined Coop and the independents in reducing prices in 2018-19 (the CAGR over 2017-19 was -2.8%).

2.13 The trends in disbursement costs displayed in Table 2 follow a significantly different pattern, maintaining a CAGR above inflation including in the most recent period. This finding suggests that: firstly, the funeral directors market is different and potentially more competitive than the market for funeral services; and secondly, that the increasing trend in disbursement costs should be carefully taken into account when trying to evaluate the funeral directors market on the basis of ATR.

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	Burial disbursements	Cremation disbursements	Combined (weighted by burial/cremation volumes)
2006-2019	4.4%	2.5%	2.9%
2010-2019	2.7%	2.1%	1.9%
<b>2016-2019</b>	<b>1.4%</b>	<b>1.0%</b>	<b>0.7%</b>

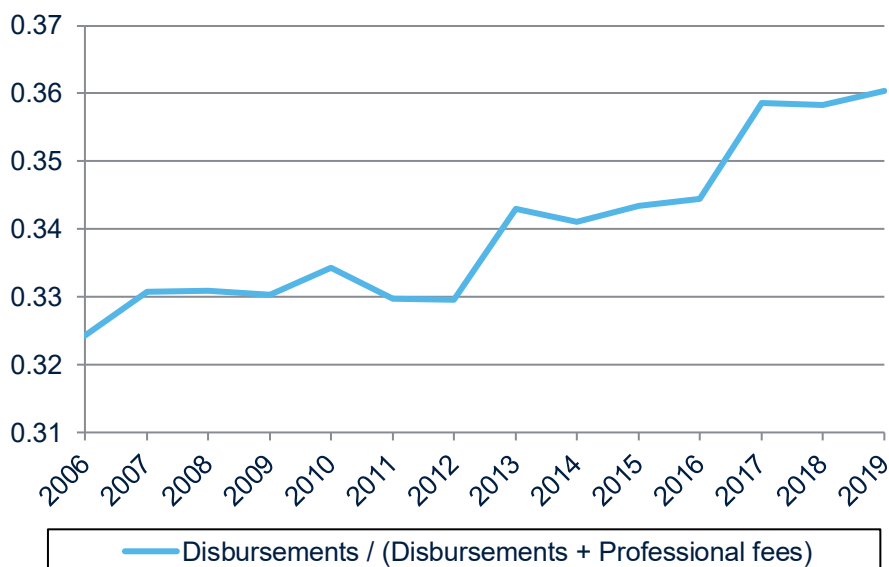
Source: based on CMA analysis of SunLife data, Appendix N to the PDR, Tables 3, 5 and 6.

2.14 Figure 1 below shows the trend in combined disbursements (weighted by burial/cremation volumes) as a proportion of total revenues (defined as the sum of combined disbursements and combined professional fees weighted by share of supply). This analysis suggests that an ever-growing proportion of total revenues is constituted by disbursements.<sup>216</sup>

<sup>216</sup> It can be noted that the combined growth rate is lower than the growth rates of both the types of disbursements. This is due to the fact that over the considered period the share of cremations in the funeral mix (characterized by lower disbursement costs) increased from 72.4% to 78.2%.

- 2.15 We believe that this result should be carefully taken into account when trying to draw conclusions on the functioning of the funeral directors market based on measures such as the ATR. Indeed, the increasing trend in disbursement costs is expected to affect any conclusion on pricing trends based on ATR in the direction of an overestimation of the price increases.

#### Disbursements as proportion of total revenues, real, deflated using RPI index, base = 2018



Source: based on CMA analysis of SunLife data, Appendix N to the PDR, Tables 3 and 5.

Note: Total revenues are defined as the sum of combined disbursements and combined professional fees. Combined disbursements are weighted by burial/cremation volumes. Combined professional fees are weighted by share of supply.

- 2.16 In conclusion we consider that, despite the limitations of the CMA's analysis outlined above, the findings of the SunLife data are consistent with our experience of the market over recent years and demonstrate increasing competitive pressures and dynamism in the supply of at-need funerals. This is also consistent with the extensive evidence provided by Co-op on its declining volume and market share performance and severe downward pressure on profitability.

### 3 Data received from the funeral directors (first mentioned PDR 7.27(a))

3.1 We note that the granularity of the data that the CMA has collected from funeral providers differs significantly across different types of funeral directors:

- (a) For the three largest providers (Co-op, Dignity, and Funeral Partners), data are sufficiently granular to compute average revenues (ARF) for at-need funeral directors fees.
- (b) For the regional Co-ops, the CMA is able to separate at-need funerals from pre-need redemptions, but since '*respondents did not have a consistent definition of disbursements, [CMA] analysis focuses on the level and trend of the ATR*'<sup>217</sup>. Moreover, due to 'concerns over how it reported disbursements between funeral types' Midcounties Co-op has been excluded from the price levels and trend analysis.<sup>218</sup>

<sup>217</sup> CMA (2020), 'Appendix N to the Provisional Decision Report: Funeral Director Pricing levels and Trends', para 105.

<sup>218</sup> CMA (2020), 'Appendix N to the Provisional Decision Report: Funeral Director Pricing levels and Trends', para 105 and footnote 52.

- (c) For the remaining large providers considered in the CMA's sample (Alan Greenwood, A W Lymn, CPJ Field, William Purves, Beverley Funerals, Lodge bros), the CMA states in paragraph 265 of Appendix S to the PDR that it has data at the ARF level.
- (d) For a sample of smaller funeral directors, *'due to poor data availability, [the CMA] were unable to collect revenue data exclusive of disbursements for the smaller firms. Therefore, [CMA] consideration of the results for these firms and their comparison to the larger firms, is based on ATR'*.<sup>219</sup>

3.2 In light of the above, we consider that the characteristics of the data provided by some of the categories of funeral directors calls into question the reliability of the CMA's analysis outlined in the PDR and appendices. Some of our most serious sources of concern are outlined below:

- (a) the inability to separate funeral directors fees from disbursements forces the CMA to rely on the analysis of ATR instead of ARF. The fact that disbursement costs are largely outside the funeral directors control and are characterized by different growth rates compared to professional fees, suggests that the CMA should not draw strong conclusions from analyses based on the ATR. In particular, CMA's analysis of disbursements indicates that disbursement costs grew more than professional fees, particularly in recent years, and so accounted for an increasing proportion of the ATR. Failing to consider this factor leads to an overestimation of funeral director price increases.
- (b) the inability to distinguish at-need funerals from pre-need redemptions might also confound results.<sup>220</sup> At-need funerals and pre-need redemptions have different price levels and growth rates. Moreover, since it normally takes an average of around 13 years for a pre-need plan to come to redemption, the price charged for redemptions today at least partially reflects pricing decisions taken many years ago.
- (c) even relying on the ARF measure can lead to biased conclusions in some circumstances. In particular, the concept of 'standard funeral' as a package is artificial, because it effectively encompasses a number of different packages, with different specifications and at different price points (which are also inconsistent across funeral directors and over time). Changes in ARF can therefore be driven by a multiplicity of factors. To give an example, Co-op did not raise list prices for any of our propositions in 2018, so the nominal increase in standard ARF in that year observed by the CMA is driven entirely by consumer preferences. In other words, an increase in ARF due to the addition by Co-op of transparently presented premium options<sup>221</sup> is mis-interpreted as consumer detriment as opposed to a welfare-enhancing change to better meet consumer preferences.

3.3 Notwithstanding all the limitations discussed above, we consider that the information disclosed by the CMA on selling prices are is generally consistent with our experience of a decreasing price trend in the market in recent years.

3.4 As such it is surprising that the CMA interprets the evidence in an opposite direction in paragraph 7.28 of the PDR, where it states that the 'evidence indicates that there has not been a consistent change in trend in prices across all funeral directors in recent years. While some funeral directors outside of the Largest providers have seen prices grow by less than inflation

<sup>219</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of Funeral Directors', para 247.

<sup>220</sup> CMA (2020), 'Appendix S to the Provisional Decision Report: Profitability of Funeral Directors', para 10

<sup>221</sup> Co-op introduced Classic and Traditional funerals in 2017 to replace its previous offering of Adult funerals, with Classic being a more premium proposition, having higher specifications and a higher price point.

on average since 2016 (as shown by data from Beyond), the Other Large funeral directors have continued to increase prices (as measured by average revenue per funeral) largely in line with the past. There is similarly no obvious change in trend for the Smaller funeral directors from whom we have gathered revenue data.<sup>222</sup>

- 3.5 The following paragraphs comment specifically on the analysis of pricing data for each group of funeral directors as defined in Table 3 of the PDR.

**Three largest funeral directors:**

- 3.6 Table 3 below summarizes the results of the CMA analysis of the ARF of the three largest providers. It can be observed that the ARF for at-need funerals, over the period 2013-2018, grew at a rate that only slightly exceeded the inflation (real CAGR +0.2%). In particular, this is the result of real prices growing in the period 2013-2016 and decreasing during 2016-2018.
- 3.7 Moreover, the table below shows the growth rates in the two periods disaggregating standard and simple funerals. The price for both the categories increased in the first period and fell in the second one, however, simple funerals showed a significantly smaller price growth in 2013-2016 (real CAGR of 1.9% against 4.0% for standard funerals) and a bigger fall in 2016-2018 (real CAGR of -7.1% against -1.0% of standard funerals).

**CAGR of ARF of the three largest providers, real, deflated using RPI index**

	Standard	Simple	At-need
2013-2018	2.0%	-1.9%	0.2%
2013-2016	4.0%	1.9%	3.2%
<b>2016-2018</b>	<b>-1.0%</b>	<b>-7.1%</b>	<b>-4.2%</b>

Source: based on CMA, Appendix N to the PDR, Tables 11-13.

- 3.8 We believe that the information contained in the table above, that simply summarizes the CMA's findings, constitute strong evidence of falling prices in real terms across the three largest funeral directors in recent years. This evidence is clearly at odds with the CMA's conclusion that price caps are required to prevent providers exploiting their customers.
- 3.9 Moreover, declining prices must be read in combination with the evolution in the mix of funerals provided. In the case of Co-op, the proportion of simple funerals in the mix grew from [5-10]% in 2013 to [20-30]% in 2019. If we also include direct cremations, in 2019 low-cost funerals constituted [X] ([20-30]%) of the mix. This means that not only has the price of simple funerals decreased by more than standard funerals but also that they represented an increasing share of volumes.
- 3.10 A second element that must be read in combination with price trends is the trend in volumes. Co-op's overall at-need volumes (CWC, Simple and standard) have continued to go down in 2019 (by c. [X]%), resulting in a further loss of at-need market share. Over 2013-19, Coop's at-need volumes have decreased by a cumulative [X]%. Standard funeral volumes have continued to underperform, going down by a further [X]% in 2019. Over 2013-19, Co-op's volumes of standard funerals have therefore decreased by a cumulative [X]%.

<sup>222</sup> CMA (2020), 'Provisional Decision Report', para 7.28.

- 3.11 As already stated in paragraph 3.9 of our reply to the 'Funeral directors pricing levels and trends' Working Paper, it is clear that past price increases by Co-op and Dignity have impacted performance and further increases would not be sustainable given current and expected future market conditions. We therefore urge again the CMA to recognise that the distant past cannot be taken as the best indication of the future direction of this market.

### **Regional Cooperatives**

- 3.12 Table 4 below reports the real CAGR of the ATR of three regional Co-ops.<sup>223</sup> It can be observed that in the period 2013-2018 ATR for at-need funerals grew at a rate in line with the inflation (real CAGR of 0.3%). The ATR of both standard and at-need funerals as a whole decreased in the latest years. Simple funerals displayed instead a growth in 2016-2018, but this occurred after a decline at opposite rate in the years before.
- 3.13 Moreover, since evidence from other sources (such as the SunLife) points to disbursement costs growing more rapidly than funeral directors fees, we believe that the real fall in ARF over the period was larger than suggested by these trends.

### **CAGR of ATR of three regional Co-ops, real, deflated using RPI index**

	Standard	Simple	At-need
13-18	0.4%	-0.3%	0.3%
13-16	1.2%	-1.6%	1.1%
<b>16-18</b>	<b>-0.9%</b>	<b>1.6%</b>	<b>-0.8%</b>

Source: based on CMA, Appendix N to the PDR, Tables 17-19.

- 3.14 We believe that the information contained in the table above constitutes evidence in favour of a decreasing trend in funeral prices in the latest years and against the CMA interpretation of ever-increasing fees.

### **Large funeral directors (including the 3 largest and the regional Co-ops)**

- 3.15 We note that the analysis relating to the large funeral directors outlined in the PDR and Appendix S differs from the one provided by the CMA in the 'Funeral directors pricing levels and trends' Working Paper with regard to some important methodological aspects as well as to the conclusions. We also note that some of these differences appear to be the source of inconsistencies with other CMA statements and conclusions contained in the PDR, the appendices or previously published papers.
- 3.16 First, in paragraph 87 of the 'Funeral directors pricing levels and trends' Working Paper the CMA stated that they 'received company-level revenue and volume data for the period 2015 to 2018 from the 13 largest funeral directors by number of branches', but that due to data quality the analysis focused 'on the average total revenue (ATR) per funeral across all funeral types'. Consistent with this statement, Table 20 of the 'Funeral directors pricing levels and trends' Working Paper reported the average total revenue (ATR) of the 13 largest funeral directors and no analysis was provided on the basis of the ARF.

<sup>223</sup> As stated before, Midcounties Co-op have been excluded from the analysis by the CMA due to data quality issues.



- 3.17 This approach is also consistent with the treatment of regional Co-ops in Appendix S and Table 31 of the PDR, where the CMA acknowledged issues with the treatment of disbursements for these firms and relied on ATR.
- 3.18 Paragraph 265 of Appendix S to the PDR however, states that the CMA has data at an ARF-level for 12 of the 13 larger firms and paragraph 248 that *'in considering and making comparisons between the larger firms, [CMA] analysis is predominantly focused on ARF'*. Consistently with this statement, from paragraph 264 onwards of Appendix S the CMA discusses the ARF of the large providers concluding in paragraph 7.27(b) of the PDR that *'these firms have seen an increase in average revenue per funeral (excluding disbursements) across the period and have not displayed a similar downward trend in the average revenue to that observed for [...] and [...] in recent years.'*
- 3.19 The two approaches appear to contradict each other, as it is not clear to us if the analysis of the ARF contained in the PDR and Appendix S has been made possible thanks to new data received from the large firms after the publication of the Working Papers or if the treatment of the data in the two instances is indeed inconsistent.
- 3.20 On this point, we also note that referring to the regional Co-ops (which we understand are part of the large firms), the CMA states that since 'respondents did not have a consistent definition of disbursements, [CMA] analysis focuses on the level and trend of the ATR'<sup>224</sup>. Moreover, due to 'concerns over how it reported disbursements between funeral types' Midcounties Co-op has been excluded from the price levels and trend analysis.<sup>225</sup> These statements appear to be evidence in favour of the existence of inconsistencies in the way the CMA has treated the data of the large directors.
- 3.21 Second, limiting the discussion to the ATR, we note that the CMA changed the interpretation of the trends displayed by this metric.
- 3.22 In paragraph 92 of the 'Funeral directors pricing levels and trends' Working Paper the CMA stated that 'comparing the growth in ATR with the rate of inflation (which grew with a CAGR of 3.5% over 2016 – 2018, as measured by RPI), shows that:
- (i) 2 of the 13 funeral directors saw their ATRs fall between 2016 and 2018, with CAGRs between -1% and -2% over the period.
  - (ii) 3 of the 13 funeral directors grew at a slower pace than RPI between 2016 and 2018, with CAGRs between 1% and 2% over the period.
  - (iii) 5 of the 13 funeral directors grew at around the same pace as inflation between 2016 and 2018, with CAGRs between 3% and 4% over the period.
  - (iv) 3 of the 13 funeral directors grew faster than RPI between 2016 and 2018, with CAGRs between 5% and 6%.'
- 3.23 These conclusions seem to be in contrast with paragraph 7.27(b) of the PDR stating that 'these firms have seen an increase in average revenue per funeral (excluding disbursements) across the period and have not displayed a similar downward trend in the average revenue to that observed for [...] and [...] in recent years'. As well as paragraphs 256-257 of Appendix S to the PDR stating that: 'eleven of the 13 larger firms see a continued increase in ATR across the period' and that 'the underlying data shows that the decline in ATR in the later period does not

<sup>224</sup> CMA (2020), 'Appendix N to the Provisional Decision Report: Funeral Director Pricing levels and Trends', para 105.

<sup>225</sup> CMA (2020), 'Appendix N to the Provisional Decision Report: Funeral Director Pricing levels and Trends', footnote 52.

appear to be a generalised trend – it only affects [Firm A] and [Firm B] with all of the other larger firms seeing year-on-year increases in ATR to a greater or lesser extent’.

- 3.24 Since the underlying data are redacted, we were not able to fully understand the reasons leading to these different conclusions. We hypothesize that the analysis carried out from paragraph 254 of Appendix S to the PDR treats data in nominal values, in contrast with the considerations contained in paragraph 92 of the ‘Funeral directors pricing levels and trends’ Working Paper that referred to real ones. We request that the CMA provides the underlying data so that its findings can be properly scrutinised.
- 3.25 In addition, we consider that the analysis of the pricing trends of the 13 largest firms taken together, especially as regards the 6 ‘other large companies’, is presented in a format that makes it difficult if not impossible for the reader to provide informed comments. In particular, the only unredacted information on ARF growth rates seem to be Chart 8 of Appendix S to the PDR, that represents the weighted average of the 13 largest providers but does not have labels for any data points of the trend.
- 3.26 From Chart 8 however, we understand that in 2016 the weighted average of the ARF was in the region of £2,850 and in 2018 slightly below £2,900. These figures suggest a nominal CAGR of around 0.8%, corresponding to a negative real CAGR. These results would be again in line with our understanding of increased competition and falling prices in recent years.

#### **Small funeral directors**

- 3.27 As previously stated, due to poor data availability, the CMA was unable to collect revenue data exclusive of disbursements for the smaller firms. Therefore, the consideration of the results for these firms and their comparison to the larger firms is based on ATR.<sup>226</sup> In paragraph 7.27(c) of the PDR the CMA then concludes that ‘it is difficult to identify any clear trend amongst the Smaller funeral directors in average total revenue (including disbursements), but there is no evidence of a downward trend at the end of the five-year period’.
- 3.28 As per the analysis of the 13 large firms discussed above, we note significant discrepancies between the information reported in the ‘Funeral directors pricing levels and trends’ Working Paper and those included in the PDR and Appendix S. In particular, while Table 15 of the ‘Funeral directors pricing levels and trends’ Working Paper contained 23 funeral directors, Table 15 of Appendix S to the PDR has information on 46 of them.
- 3.29 We understand from Annex A of the Appendix S that the new set of data might originate from the receipt of additional and more informative data from the small funeral directors sampled by the CMA. That said, we were able to identify in Table 15 of Appendix S only 5 funeral directors (highlighted in red in the table below) that were also listed in Table 5 of the Working Paper (through a comparison of the reported ATR values), hence we infer that at least some ATR estimates have been corrected or modified since the publication of the Working Paper.
- 3.30 After removing from the sample those funeral directors that are flagged in Table 15 of Appendix S to the PDR as not having reliable data, as well as removing the observations lacking an estimate for the ATR in 2016 or 2018, we have computed the real CAGR of the ATR for the funeral directors over the years 2016-2018.<sup>227</sup>
- 3.31 In the years 2016-2018 the average of the real CAGR of the ATR for the 34 funeral directors remaining in the sample was equal to -0.7%. This was the result of 65% of funeral directors (22

<sup>226</sup> CMA (2020), ‘Appendix S to the Provisional Decision Report: Profitability of Funeral Directors’, para 247.

<sup>227</sup> Using the RPI index sourced from ONS.

out of 34) experiencing a CAGR that was negative or below inflation and 12 with a CAGR higher than it. Moreover, 2/3 of the funeral directors that experienced CAGR above inflation, were among the 50% least expensive funeral directors in 2016.

- 3.32 Despite all of the limitations of the available data, we believe that the analysis of the smaller funeral directors' revenues constitutes again evidence of a decreasing price trend across small funeral directors in recent years.

#### **CAGR of ATR of the CMA sample of smaller funeral directors, real, deflated using RPI**

	CAGR 2016-2018
FD 4	2%
FD 6	-4%
FD 5	0%
FD 7	-4%
FD 8	0%
FD 12	-7%
FD 9	-4%
FD 10	0%
FD 14	3%
FD 15	0%
FD 23	-3%
FD 17	-5%
FD 21	-1%
FD 22	1%
FD 20	2%
FD 19	6%
FD 18	-4%
FD 24	0%
FD 25	-1%
FD 29	-3%
FD 16	12%
FD 33	-2%
FD 28	-4%
FD 41	-12%
FD 27	8%
FD 36	-2%
FD 34	4%
FD 37	-1%
FD 31	14%
FD 39	-3%
FD 40	-1%
FD 44	-12%
FD 38	1%
FD 43	-3%

Source: based on CMA, Appendix S to the PDR, Table 15.

Note: We removed from the sample the funeral directors flagged by the CMA as not having reliable data, as well as funeral directors lacking an estimate for the ATR in 2016 or 2018.

#### **Analysis of pricing trends using Beyond data**

- 3.33 Paragraph 7.28 of the PDR states that 'some funeral directors outside of the Largest providers have seen prices growing by less than inflation on average since 2016 (as shown by data from Beyond)'. Beyond data used by the CMA for this analysis consists mostly of smaller funeral

directors as it does not contain information on branches of Co-op, Funeral Partners, regional Co-op and Dignity's branches.<sup>228, 229</sup> We note that the CMA has placed significant weight on these data to carry out its price dispersion analysis, but has downplayed their relevance with regard to the insights they could bring in relation to the smaller funeral directors' price trends.

- 3.34 We consider indeed that the information reported at paragraphs 58 and 60 of Appendix N to the PDR constitute useful complementary evidence to the analysis of the trends in ATR for the small funeral directors. In particular,
- (a) Considering the 88 branches present throughout 2016 to 2019 with less than 30% year on year price changes, the average CAGR between 2016 and 2019 was 1.6% which in real terms is -1.5%; and
  - (b) Considering the 381 branches present throughout 2017 – 2019 with less than 30% year on year price changes, the average CAGR between 2017 and 2019 was -0.2% showing that average prices remained at a similar level over the period. However, in real terms average prices fell with a real CAGR of -3.1%.

As stated, this constitutes additional evidence of a decreasing trend in prices across small funeral directors in recent years.

#### **4 Simple funeral price levels and trends**

- 4.1 The CMA complements the analysis of simple funerals price levels and trends carried out using data received from the three largest providers and the regional Co-ops with information received from the price comparison website Your Funeral Choice (YFC). This data includes the price of a specified simple funeral that includes the funeral director fees for meetings, paperwork and running the funeral; the collection of deceased and care prior to funeral; and a hearse or appropriate vehicle for transport to the funeral and a basic coffin.<sup>230</sup>
- 4.2 In paragraph 66 of Appendix N to the PDR, the CMA acknowledges that the 'dataset captures the price of a specific type of simple funeral and that there may be discrepancies in the simple price the funeral directors report' and that 'similarly to other datasets used in this analysis, funeral directors decide whether to participate in the price comparison website and therefore high-cost funeral directors may decide not to participate'.
- 4.3 We already questioned in section 2 of our reply to the 'Price dispersion analysis' Working Paper the comparability of YCF simple funerals with the simple packages actually offered across the industry. With regard instead to the incentive to participate in the price comparison website, we consider that, when looking at trends, this might actually cause an underestimation of the price reductions. Indeed, among each category of funeral directors it is reasonable to expect increasing trends in prices from those firms starting at lower levels.
- 4.4 We also note Table 9 reports simple price for Co-op equal to £1,997 in 2016 and to £1,995 starting from 2017, therefore not reflecting Co-op additional price reductions leading to:
- (a) a price of £1,675 in Scotland starting from 25 May 2017; and
  - (b) a price of £1,895 in England and Wales starting September 2018.

<sup>228</sup> CMA, (2020) 'Appendix O to the Provisional Decision Report: Price Dispersion Analysis', para 33.

<sup>229</sup> CMA, (2020) 'Appendix N to the Provisional Decision Report: Funeral Director Pricing levels and Trends', footnote 26.

<sup>230</sup> CMA, 'Appendix N to the Provisional Decision Report: Funeral Director Pricing Levels and Trends', paragraph 63 and footnote 35.

- 4.5 That said, Table 5 below shows that simple funeral prices averaged across all funeral directors in the Your Funeral Choice dataset decreased in real terms by -3.2% on average per year in the period 2014-2018 and by -5.36% on average per year from 2016 onwards.

Error! No text of specified style in document. CAGR of mean price of simple funerals by company type, real, deflated using RPI

	Co-op	Dignity	Funeral Partners	Small chain	Independent	Combined
2014-2018	-3.2%	-8.2%	1.4%	0.1%	-1.1%	-3.2%
2016-2018	<b>-3.38%</b>	<b>-14.40%</b>	<b>1.72%</b>	<b>-0.41%</b>	<b>-2.35%</b>	<b>-5.36%</b>

Source: based on CMA, Appendix N to the PDR, Table 9.

- 4.6 We consider the table above to constitute strong evidence of the significantly declining trend in simple funeral pricing, therefore confirming and strengthening the findings coming from data provided by the funeral directors. Moreover, it can be noted that the fall in real prices is greater in the most recent years. This is consistent with the interpretation that a decreasing trend in prices has occurred in recent years.

## 5 Cost drivers

- 5.1 The CMA complements its narrative of ever-increasing prices and a competitive process that does not work well with some evidence dealing with cost pressures on the industry. In paragraph 7.43 of the PDR the CMA states that the 'financial information and internal documents of the Large funeral directors does not support the finding that the price increases observed are justified by industry-wide operating cost pressures'. In line with this, paragraph 7.45 states that 'the evidence we have received from smaller funeral directors indicates that industry-level cost inflation has been in line with the general economy'.
- 5.2 The CMA's analysis of cost drivers is not sufficient nor complete enough to draw clear conclusions on whether costs can be considered to be the driver of price increases.
- 5.3 With regard to small firms, the information disclosed in paragraph 6.11 of the 'Funerals Market Study Final Report' on which the CMA relies comes from a very small and potentially not representative sample of small funeral directors. Moreover, the provided information is nothing more than anecdotal evidence that does not address directly the question on whether price increases are driven or not by costs. Clearly, the information provided cannot be used as conclusive evidence that industry-level cost inflation has been in line with the general economy.
- 5.4 We also note that some of the few reported comments from funeral directors mention a direct link between costs and prices. To give an example, paragraph 6.11(f) of the 'Funerals Market Study Final Report' states: 'We gave the staff a pay rise last year of 3 per cent, so we put the prices up 3 per cent. The coffins went up about the same. So, everything got 3 per cent put on it overall just to cover that'.
- 5.5 We then question the CMA's interpretation of the drivers of Co-op strategy and program of investment, that is concisely summarised in paragraph 7.46 of the PDR stating '*Co-op told us it had needed to, in 2018, undertake a programme of investment, largely impacting two main cost*

*categories: property costs and transport costs, as a result of increased competition. We are not persuaded by this argument.*

- 5.6 We disagree with CMA's dismissal of the importance of increasing property and transport costs (e.g. increasing property costs partially due to new openings and transport costs to fleet renewals) given that the strategic decisions were taken in response to increasing levels of competition in the market (potentially combined with an increase in consumer focus on quality).
- 5.7 Regarding the other sources of potential cost increases mentioned by the CMA, paragraph 7.48 of the PDR acknowledges that the amount of time that the deceased is in the care of a funeral director has increased. However, the CMA does not consider this element to be a large driver of costs. We believe instead that the CMA is underestimating the impact that time in care could have on:
- (a) mortuary costs, since the CMA appears to dismiss this element based on information received from a single supplier;
  - (b) increased staff time required to deal with additional interactions with families, more family visits and the management of the increased funerals overlap caused by the greater time in care; and
  - (c) other additional costs linked to the changes to the registration process and the need to obtain two doctors' certificates for the purpose of cremation.
- 5.8 Lastly, we note that the CMA's conclusions regarding additional costs coming from the personalization of funerals are in line with the conclusions on increased time in care, with paragraph 7.50 of the PDR suggesting that this element could even have the effect of reducing the costs. We do not agree with CMA's position.
- 5.9 We consider instead that personalization is not something that can be merely added to a funeral in a way that becomes more and more efficient as time passes. It requires significant staff time, as it involves a close dialogue with the client that leads to solutions and actions that are specific to each particular case.

## **6 Price dispersion**

- 6.1 In paragraphs 7.57-7.61 of the PDR the CMA outlines the conclusions of the price differentials analysis described in Appendix O to the PDR. The main narrative put forward by the CMA is that 'when the price differential for a comparable product between funeral directors in the same local area is large, cost/quality differences may not fully explain the differential'.
- 6.2 We note that Appendix O to the PDR is almost identical to the 'Price dispersion analysis' Working Paper. In particular, while in paragraph 16 of Appendix O the CMA outlines a long list of arguments and critiques received from a variety of funeral providers, none of them were incorporated in the analysis discussed in the document.
- 6.3 We consider that all the issues raised in our reply to the 'Price dispersion analysis' Working Paper still affect and undermine the results.
- 6.4 First, both Beyond and YFC data contain information on standardised packages<sup>231 232</sup> consisting of specific sets of elements that might differ significantly from the funerals advertised and offered

<sup>231</sup> CMA (2020), 'Appendix O to the Provisional Decision Report: Price Dispersion Analysis', para 34.

<sup>232</sup> CMA (2020), 'Appendix O to the Provisional Decision Report: Price Dispersion Analysis', footnote 27.

by the various funeral providers. Moreover, the Beyond dataset does not contain information on Co-op, Funeral Partners or the regional Co-ops.<sup>233</sup> Dignity complained to the Advertising Standards Authority (ASA) about Beyond's use of its prices on its website, stating the prices on Beyond's website were misleading. Beyond removed all prices for Dignity's branches and the ASA upheld the complaint in January 2020.<sup>234</sup> As a consequence, the dataset is clearly not representative of the entire population of funeral providers.

- 6.5 Second, we disagree with the CMA's statement that, for standard funerals, they are able 'to control for what is included in the product' (there are very large differences in the scope and quality of what is offered under 'professional fees', 'hearse', 'standard coffin', and generally each component of the package). In particular, we consider that the CMA price analysis as a whole completely fails to take into account the role of differences in characteristics such as quality, trust and reputation. Different funeral types are treated as 'commodities', when in reality in the funeral sector the quality dimensions of the products are at least as important as price.
- 6.6 Third, we note that local authorities' boundaries are likely to differ significantly from geographic markets. This warns against comparing funeral directors facing potentially different demand, cost and competitive conditions. This issue is exacerbated by the methodology of the analysis heavily relying on min-max spreads. Indeed, as the min-max analysis is constructed on the basis of two inputs only, namely the extremes of the price values, the presence of different market conditions inside the boundaries of each local authority increases the risk of constructing the metric based on meaningless comparisons.
- 6.7 Fourth, we question the methodology of the analysis. The min-max difference in each local authority area is a metric that is likely to be affected by the presence of outliers. As discussed, this risk is exacerbated by the fact that local authority areas do not coincide with geographic markets. The outliers issue is likely to impact also the averages of min and max values across all local authority areas. Indeed, since we understand that no weights have been applied (such as number of funerals in the local authority areas, GDP, etc.) to compute the averages across local authority areas, results are likely to be driven again by extreme values.
- 6.8 Fifth, the CMA analysis aims only at identifying the existence of a certain degree of price dispersion; it does not contain any concrete evidence on whether (and how) these differences in prices translate into an adverse effect on competition.

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<sup>233</sup> CMA (2020), 'Appendix O to the Provisional Decision Report: Price Dispersion Analysis', para 33 and footnote 28.

<sup>234</sup> CMA (2020), 'Appendix O to the Provisional Decision Report: Price Dispersion Analysis', para 36(a).