

## Memoria Limited

### Response to the CMA's Funerals Market Investigation Provisional Decision report

#### 1. Executive summary

- Memoria remains very concerned that the CMA's conclusions in the Provisional Decision Report continue to reflect a fundamental lack of understanding of how competition really works in the cremation sector.
- The CMA appears to have started with the presumption that prices are too high, and that price regulation is the only solution, and then framed the issues of this Funerals Market Investigation to match that solution.
- In doing so, the CMA has failed to recognise core aspects of the cremation market, including that:
  - (i) location and familiarity are not the only factors driving customer choice, and that customers will switch away from their local crematorium if an alternative provider offers better quality and/or value for money;
  - (ii) funeral directors play a fundamental role in customers' choice of crematorium;
  - (iii) there are significant differences in quality between crematoria, especially when comparing private sector and local authority sites;
  - (iv) private sector operators have made significant investment since 2010 in both developing new sites and upgrading existing ones, whereas local authority crematoria have generally only recently started investing more to improve their facilities and compete on the market;
  - (v) crematoria do not have a homogenous product offering, and consumers are increasingly assertive in their requirements for a differentiated product tailored to their specific needs;
  - (vi) Memoria's success in winning a significant share of "battleground" cremations by offering better quality and choice is evidence that location is not the only factor in families' choice of crematorium; and,
  - (vii) a catchment area including only rivals located within a 30-minute *cortege speed* drive time is far too narrow to capture the bulk of important competitive interactions in the cremation market.
- Where Memoria and other industry participants have submitted evidence on these points, and demonstrated that the market is actually working well, the CMA has either responded erroneously or not at all. The CMA's selective use of evidence, and lack of transparency on how it has interpreted each piece of evidence and how it has drawn its conclusions, has made it impossible for Memoria to respond to many of the CMA's provisional conclusions.
- The underlying issue driving high profits at certain crematoria is not generally excessive *prices*, but is more often excessive volumes and underinvestment at certain sites. This is driven by some crematoria in favoured locations (i.e. facing no threat of entry due to planning restrictions), carrying out very high numbers of cremations from often old and underinvested facilities.
- Memoria has no confidence in the scale of the alleged provisional AEC advanced by the CMA, and there is no value in the CMA's assertion that private sector cremations are overpriced by £215. This is patently untrue for Memoria's crematoria, which simply would not be able to cover their costs if prices were cut by this amount from current levels.
- The CMA's profitability analysis is fundamentally flawed, as it relies on a land value assessment drawn from a limited number of recent, non-representative land transactions, and insufficient depreciation of assets for providers relying on modern, well maintained facilities.
- The CMA's proposal for a highly interventionist "one-size-fits-all" price-cap remedy is ineffective, disproportionate, and would have destructive consequences for consumers overall with associated detriments seriously outweighing any benefits.

- As Memoria [✂] (even by the CMA's flawed measure), Memoria does not contribute to the alleged provisional AEC and should not be subject to any remedies. A price cap would threaten Memoria's viability as a business, destroying incentives to invest, and undermining the survival of its existing sites. Therefore, Memoria could not endure the CMA's proposed price cap.
- Ultimately, the CMA should be very careful not to impose a disproportionate, ineffective, and destructive remedy, which will send back the cremation sector to the vicious cycle of underinvestment, low product diversity/choice, low prices and low quality of the 1970s-1990s. This would be incredibly harmful to consumers and fundamentally contrary to what consumers are demanding.
- Finally, the CMA's intention to defer the implementation of a definitive remedy for the alleged provisional AEC to a "supplementary MIR", at an unspecified future point in time, is an illegitimate way of proceeding. Further, the CMA's reasons for choosing such course of action are neither credible nor appropriate. Overall, the CMA's approach is one of doubtful legality

## 2. Overview

With this paper, Memoria Ltd ("**Memoria**") responds to the CMA's Provisional Decision report (the "PDR") notified as part of its Funerals Market Investigation on 13 August 2020.

The PDR suggests that most crematoria are local monopolies having a single homogenous product offering at broadly the same level of quality, with customers selecting their nearest and most familiar site, apparently regardless of quality, price, or any other competitive factor.

Memoria does not recognise this representation of the cremation sector.

Memoria's entire business model relies on being able to generate and then build demand for its crematoria over existing local options, by offering an improved quality of service and location at an attractive price relative to its rivals. In Memoria's experience, many customers will switch away from familiar sites based on quality, price and other competitive factors once such choice is available.

The cremation product market is anything but homogenous. It consists of a diverse offering, where the actual cremation of the deceased is the only constant element amid important variables of quality of site and of service offering. As a result of this fundamental error in understanding the cremation market, the CMA has arrived at a remedy that will always be a square peg in a round hole. The CMA's proposal is neither effective nor proportionate, and it is ultimately destructive to consumer benefits.

In the PDR, the CMA has failed to recognise that the cremation sector is rapidly evolving in ways that have transformed customer choice. Newly available choice includes access to high quality cremation services at a low cost when a simpler approach is desired, or when families are able to be flexible over the time of day at which they hold their service. This is largely due to the efforts made by Memoria and certain other private and public operators to take a flexible and family-focused approach.

It is fundamental that any CMA intervention in the cremation sector does not inadvertently extinguish the significant consumer benefits that recent investment and innovations have brought, or prevent further investment or innovations from being made in the future. The CMA must ensure that supply continues to meet demand and that customers continue to be offered an increasing range of options. Conversely, introducing a new and onerous regulated pricing regime could hinder future investment, not to mention return crematoria to the low quality and low investment vicious cycle of the 1970s-1990s.

Rather than starting with the presumption that price regulation is the only solution, and then framing the problems to match that solution in a self-serving way, the CMA should instead recognise that in reality competition has delivered significant consumer benefits in recent years. These include, increased capacity, higher service/facility quality, and a wider choice of services at different price points (including lower prices). Therefore, the CMA should consider that there is scope for competition

to be encouraged to deliver more benefits through market mechanism, rather than replacing it with regulated prices.

In doing so, Memoria urges the CMA to bear in mind the risks of **excessive and/or poorly devised regulation to restrict prices without taking account of quality differences or the critical need for further investment in the sector**. This would have a chilling effect on efficient investment and cause a failure to maintain the improvement in both capacity and quality levels seen in recent years, which will need to continue in the future.

The Enterprise Act 2002 stipulates that if the CMA finds an AEC during a Market Investigation, it is required to consider the imposition or recommendation of remedies.<sup>1</sup> Further, in making its decision, s 138(4) Enterprise Act 2002 requires the CMA to:

“have regard to the need to achieve as **comprehensive a solution** as is **reasonable** and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.” (emphasis added)

To fulfil this requirement, the CMA should consider possible comprehensive remedy options to address the AEC, their detrimental effects, and whether they are (i) effective and (ii) reasonable by being proportionate.<sup>2</sup>

In evaluating the effectiveness of potential remedies, the CMA should consider the risks associated with different remedy options and should favour remedies that have a higher likelihood of achieving their intended effect of remedying the alleged provisional AEC.<sup>3</sup> Such remedies should be capable of effective implementation, monitoring and enforcement.<sup>4</sup> Behavioural remedies (e.g. a price cap) are deemed to have a reduced effect and are likely to constrain beneficial aspects of competitive rivalry.<sup>5</sup>

In considering the reasonableness of different remedy options, the CMA will have regard to their proportionality. A remedy will be considered disproportionate if it is ineffective with respect to its aim, or if its ‘costs’ are disproportionately large in comparison with the AEC at which it is aimed.<sup>6</sup> Therefore, a proportionate remedy is one that:

- (a) is effective in achieving its legitimate aim;
- (b) is no more onerous than needed to achieve its aim;
- (c) is the least onerous if there is a choice between several effective measures; and
- (d) does not produce disadvantages which are disproportionate to the aim.<sup>7</sup>

In Memoria’s view, as it will set out below, the CMA’s proposed remedies in this case do not meet these standards.

In this response, Memoria will address the core failings contained in the PDR, by demonstrating that the CMA has:

- erroneously interpreted its own *Consumer survey results* and the resulting empirical analyses as depictions of crematoria and customer behaviour in relation to quality and price;
- erred in the execution of its catchment analysis (i.e. the 30-minute cortege drive time analysis);

---

<sup>1</sup> Enterprise Act 2002, s 138(2).

<sup>2</sup> CC, *Guidelines for market investigations: Their role, procedures, assessment and remedies* (CC3 Revised) para 329.

<sup>3</sup> CMA, *Market Studies and Market Investigations: Supplemental guidance on the CMA’s approach* (CMA 3) para 4.16.

<sup>4</sup> *ibid*, para 4.17.

<sup>5</sup> *ibid*

<sup>6</sup> *Tesco plc v Competition Commission* [2009] CAT 6 (4 March 2009) para 131.

<sup>7</sup> CC, *Guidelines for market investigations: Their role, procedures, assessment and remedies* (CC3 Revised) para 344; as originally set out in *Tesco plc v Competition Commission* [2009] CAT 6 (4 March 2009) para 137; and later cited by *Barclays Bank plc and others v Competition Commission* [2009] CAT 27 (16 October 2009) para 20, and *BAA Limited v Competition Commission and Ryanair Limited* [2012] CAT 3 (1 February 2012) para 20(2).

- largely ignored the underlying causes of the alleged provisional AEC in its profitability analysis;
- misrepresented the crematoria product market as one that is largely homogenous;
- erroneously devised an ineffective price-regulation remedy as a result;
- ignored the disproportionately onerous consequences on the market that such remedy would cause; and,
- ignored the disproportionately destructive consequences on consumer benefits that such remedy would cause.

Finally, this response will discuss how the CMA's proposal to "keep on the agenda" the possibility of price regulation remedies by recommending that the CMA's Board consider consulting on a "supplementary MIR" focussed on pricing once the impact of COVID-19 on the funerals sector has subsided **is an illegitimate way of proceeding.**

Overall, this response will demonstrate that the price-cap proposed by the CMA is neither a comprehensive solution to the alleged provisional AEC, nor it is reasonable, and the PDR's entire remedy proposal is therefore (i) ineffective; (ii) disproportionate; and (iii) destructive of relevant consumer benefits.

### 3. Competition between crematoria

In the PDR, the CMA suggest that most crematoria are local monopolies, with customers selecting their nearest and most familiar site, apparently regardless of differences in quality, price, or any other competitive factor.<sup>8</sup> In fact, the CMA maintains that qualitative differences between crematoria are not systematic.<sup>9</sup> Additionally, the CMA dismisses the role played by funeral directors in a customer's choice of crematorium, as if this were marginal or non-existent.<sup>10</sup>

Memoria strongly believes that this is not an accurate reflection of reality.

Contrary to the PDR's contention, Memoria has found that customers *do* care passionately about funeral quality, and crematoria that provide poor service or facilities will lose customers over time unless they bring their offer up to competitors' levels and offer customers a variety of service options to meet their needs. This is evidenced by the substantial investment made in recent years by crematoria in both the private and public sector, and by the introduction of newly differentiated services, predominantly led by Memoria (e.g. discounts for off-peak slots; Low Cost Funerals; Direct attended and unattended Cremation) to meet the differing requirements and needs of different families.<sup>11</sup>

Further, in Memoria's experience, funeral directors usually propose three to four crematoria to customers, explaining each site's offering and the main differences in quality (e.g. facilities or slot length) and location. Funeral directors visit crematoria regularly as part of their work with families and are extremely familiar with each site. In fact, a funeral director will often book the crematorium on the family's behalf. The CMA's position ignores the basic fact that the most important part of a funeral is the service, which is extremely dependent on the crematorium where it takes place. A funeral director is mostly judged by the customer's satisfaction with the quality of the service, therefore any funeral director has a vested interest in the customer choosing a crematorium whose characteristics will reflect well on the funeral director.

Ultimately, the CMA's core arguments in the PDR revolve around the balance between location, quality and price in driving customers' choice of crematorium and, therefore, competition between crematoria.

---

<sup>8</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 7.

<sup>9</sup> *ibid* paras 6.57 and 6.79(b).

<sup>10</sup> *ibid* para 6.15

<sup>11</sup> See Memoria's Response to the CMA's Working Papers of 30 January 2020, Appendix 2 (reattached as Appendix 4 to this submission) for examples of recent investments in the cremation sector.

Specifically, the CMA deems location to be the dominant (and almost sole) driver of consumer decision making, with quality and price playing at best a very limited role.<sup>12</sup> Memoria believes that location, quality and price are all interlinked factors driving competition and customers' choice.

Therefore, this section 3 will focus on the evidence in relation to each of these three drivers of consumer choice: starting with (i) quality (which Memoria sees as a critical competitive factor, and at least equally important to location); then (ii) price; and finally (iii) location.

### 3.1. The importance of quality in customers' choice of crematorium

Memoria is pleased that the CMA has finally recognised that "the overall quality of the cremation service is generally important to customers."<sup>13</sup> This is a welcome change from the CMA's initial position set out in this Funerals Market Investigation's Working Papers. Indeed, one striking feature of this Funerals Market Investigation's *Consumer survey results* (the "Survey") is the level of customer satisfaction with the quality of service that crematoria currently provide.<sup>14</sup> Sixty-six percent of consumers said that their expectations had been met in full and an additional 29% said that they had been exceeded.<sup>15</sup>

Nonetheless, Memoria is disappointed to note that, despite the amount of evidence presented to the contrary by all major providers of cremation services, the CMA is still choosing to ignore the fundamental role played by quality in customers' choice of crematorium. In fact, Memoria notes that the CMA's assessment of quality continues to rely selectively on the Survey, which is unlikely to be representative of the competition faced by Memoria, or the drivers of decisions made by its customers.

No information was originally provided to Memoria on the sample size to be adopted for the Survey, but the resulting sample of customers who had actually purchased a cremation in the relevant time period was only 376 respondents. This means that the sub-sample who had purchased a cremation from Memoria, for example, or who had purchased a direct cremation, is likely to have been extremely small. Memoria carried out 11,251 cremations in 2018,<sup>16</sup> compared with a total of 481,308 in the UK (i.e. Memoria accounted for 2.3% of the total).<sup>17</sup> This is problematic because it is unlikely that the responses given by the broader population (e.g. those located in city centres where there is only one choice of crematorium within a reasonable drive time, and bearing in mind that 70% of customers will have used a public sector crematorium) are unlikely to give a good guide to the preferences and considerations of Memoria's customer base. If Memoria customers were representatively captured by the Survey, there would only be 8-9 Memoria customers in the sample.<sup>18</sup>

It is notable that a survey carried out by Westerleigh focused only on its own customers (which are likely to be more similar to Memoria's than those covered by the Survey),<sup>19</sup> appears to have given results that were quite different to those of the Survey in important respects. Westerleigh's response to the Working Papers in relation to price regulation noted that "Westerleigh's [s]urvey demonstrates [...] that customers consider overall quality to be by far the most important factor when choosing a crematorium (far more so than price), and that they are willing to travel considerably further than the CMA currently assumes in order to access the quality they desire."<sup>20</sup> This is consistent with private

---

<sup>12</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 7.

<sup>13</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.79

<sup>14</sup> CMA Funerals Market Investigation, *Consumer survey results*, para 94.

<sup>15</sup> *ibid*, para 95.

<sup>16</sup> CMA, Profitability model sheet "Volumes".

<sup>17</sup> The Cremation Society, UK 2018 data <<https://www.cremation.org.uk/United-kingdom-2018>>

<sup>18</sup> Note that Memoria also made a number of specific comments on the questions to be asked and survey methodology, which were not fully reflected in the final survey design. These are not repeated here, but can be found in Memoria's submission of 24<sup>th</sup> May 2019.

<sup>19</sup> The CMA's consumer survey does not appear to have asked respondents for the name of the crematorium they used, so is unable to test whether its responses were indeed representatively drawn from public and private sector customers, or from customers of new and older crematoria.

<sup>20</sup> Westerleigh Group's response to the CMA's working paper on price regulation for crematoria services, 16<sup>th</sup> June 2020, para 7.

sector crematoria offering a typically higher quality of service, and therefore able to attract customers over a wider distance relative to a typical local authority crematorium. The Westerleigh survey also showed that “[a]lmost no respondents believed that ‘crematoria are much the same’.”<sup>21</sup>

Given that Memoria’s sites were entirely built within the last 10 years, this pattern may be even more strongly observed in any survey of Memoria’s customers. However, unfortunately the Survey (which did not ask respondents which crematorium they used, and in any case is unlikely to have captured many Memoria customers) cannot test this proposition.

As a result of its reliance on its own flawed Survey, the CMA erroneously concluded that “only a small number of customers compare crematoria” and that for this “small number of customers” the attractiveness of the buildings and grounds is broadly equal in importance to proximity. As such, the CMA argues, “the scope for competition on the basis of quality is limited”.<sup>22</sup> However, it is undeniable that that familiarity, which the CMA cites as evidence that customers do not compare crematoria (i.e. choosing a crematorium based on “personal experience of using it before, or of attending a funeral there”),<sup>23</sup> is in itself likely to primarily reflect the customers’ experience of the quality of that facility and the services offered.

Further, in its response to the CMA’s Working Papers, Memoria pointed out that the attractiveness of the crematorium is only one of many qualitative factors that were mentioned by Survey respondents as having influenced their initial choice of crematorium.<sup>24</sup> The Survey shows an overall balance between location and quality that is roughly 50:50 when families initially choose a crematorium (many of whom may not have had a prior personal experience of the crematorium in question). Indeed, quality factors play a very important role in customers’ choice of crematoria for 45% of Survey respondents.

Table 1: Most important factors in choosing the crematorium used

Reason	%	Category	Category %
It is the only local crematorium	34%	Location	49%
The distance/ journey time/ location was convenient	10%		
I/we liked the location	3%		
Easy for funeral guests to find/get to	2%		
Personal experience of using it before, or of attending a funeral there	24%	Quality	45%
Recommendation by the funeral director	4%		
They had availability around the time we needed them/wanted	4%		
It was an attractive/ peaceful/well maintained place/ buildings/gardens	3%		
Recommendation by family member(s)/ friend(s)/ neighbour(s)/work colleague(s)	3%		
Good reputation in the area	3%		
Good customer/user reviews/ratings	1%		
Its size/capacity	1%		
Offered choice of dates/days and times for the service	1%		
Better than the alternative crematorium	0%		
What the staff are like	0%		

<sup>21</sup> *ibid*, para 36.

<sup>22</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.78(b).

<sup>23</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.21 and Table 9.

<sup>24</sup> Memoria’s Response to the CMA’s Working Papers of 30 January 2020, §4(a)(i) p15 and Table 3; and CMA, Funerals Market Investigation, *Provisional Decision report*, Table 9.

Reason	%	Category	Category %
Its value for money	1%	Price	1%
Its prices	0%		
It belonged to the funeral director or was selected by the funeral director	2%	Other	6%
Don't know/can't remember	1%		
Wishes of the deceased	1%		
Another reason	1%		
No single reason/ all important	1%		

Source: Calculations based on CMA Funerals Market Investigation, *Crematoria Tables published 30/1/2020*, Table 328, Sheet T45.

Conservatively Memoria has assumed that "NET: Any non-FD recommendation" double-counts "Recommendation by family member(s)/friend(s)/ neighbour(s)/work colleague(s)" and removed it from the total.

Memoria notes that both Dignity and Westerleigh submitted evidence to the same effect.<sup>25</sup> Yet, the CMA has downplayed these three submissions by arguing that their interpretation of the Survey in relation to the importance of quality to customers is "somewhat overstated."<sup>26</sup> The CMA contends that some of the factors cited as evidence of the importance of quality in customers' choice of crematoria (e.g. "choice of date and time for the service" and "personal experience") do not solely relate to quality, if at all.<sup>27</sup>

Memoria wholeheartedly disagrees with this conclusion. Regardless, even if some of these factors amounted to additional considerations on top of quality, they would still not pertain to location. Conversely, some Survey factors that Memoria conservatively considered indicative of location (e.g. "liked the location" and "easy for funeral guests to find/get to") clearly also to some extent reflect elements of the quality of the site that are at least to some extent influenced by the provider (e.g., may reflect road layout; ease of parking; attractiveness of surroundings; etc.).<sup>28</sup> Therefore, the role of quality as the most important factor for customers in choosing a crematorium is likely to be even greater than that of location. The CMA's failure to recognise the role of quality therefore amounts to a fundamental lack of understanding of what consumers consider important when choosing a crematorium, even based on their own flawed Survey (which is likely to significantly understate the importance of quality to Memoria customers).

The CMA's belief in the primacy of location seems to be underpinned by the Survey showing that 81% of customers "chose their closest crematorium" against 14% who did not (53 respondents out of a total of 376).<sup>29</sup> However, this does not necessarily mean that 81% of customers chose a crematorium because of its location, as this group would include customers who have chosen a site for considerations other than location (e.g. quality), and the crematorium also happened to be the closest.

It is, therefore, wrong of the CMA to state that customers "tend to choose a crematorium on the basis of location and familiarity" with a preference for sites that are closest.<sup>30</sup>

<sup>25</sup> Dignity plc response to the CMA's Working Papers on cremation services of 30 January 2020, p20; and Westerleigh Group's response to the CMA's Working Papers published on 30 January 2020, para 18(b).

<sup>26</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.65.

<sup>27</sup> *ibid*

<sup>28</sup> This is roughly the same proportion observed in the smaller Survey sample of 26 respondents who explicitly compared alternative crematoria, of whom "12 said that they compared on the basis of the attractiveness of the buildings and grounds [...] whereas 11 did so on the basis of location/proximity [...] five said that they compared on the basis of the availability of booking slots, four [...] compared crematoria fees" and other aspects of quality and facilities were mentioned by "four and one respondent respectively" (Competition Paper, para 28). That is, only 11 out of 26 respondents compared on the basis of location/proximity, whereas the majority (15) compared on a wider range of aspects of quality and price.

<sup>29</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.25 and Table 15.

<sup>30</sup> *ibid*, para 6.77.

Further, taking the Survey results at face value, the balance between quality and location tilts significantly in favour of quality when families are recommending a crematorium that they have actually used to others. In the Survey, 70% of respondents said they had recommended (or would recommend) the crematorium they had used to someone else (with the others generally saying it was inappropriate to do so, or not giving a reason, rather than saying they were dissatisfied with the service received).<sup>31</sup> Therefore, an overall majority of crematoria customers recommended a crematorium that they have used, a point that is irreconcilable with the CMA’s assertion that recommendations “have a very limited role in the choice of crematorium by customers.”<sup>32</sup>

The CMA notes that the Survey shows that only 8% of customers “found out about the crematorium that they used on the basis of recommendations.”<sup>33</sup> However, that is entirely compatible with there being a larger proportion of customers who may have not *found out* about their crematorium through a recommendation, but nonetheless *chose it* on the basis of multiple factors including quality **and** one or more recommendations.

The CMA highlighted that over half of recommendations recorded in the Survey were made on the basis of location or proximity.<sup>34</sup> However, this is irreconcilable with the Survey results which show that most recommendations were made on the basis of different aspects of quality that had been disaggregated into numerous categories (e.g. quality of facilities; capability to meet faith requirements; service professionalism; reputation; size/capacity; etc.).<sup>35</sup> As summarised in the Table 2 (*below*), the Survey results overall found that nearly two thirds of respondents listed some form of quality assessment as the main reason for recommending their choice of crematorium. Even compared against all location-related reasons for selecting a crematorium, that implies that over twice as many respondents would make a recommendation based on quality as opposed to location factors.

Table 2: Reasons for recommending the crematorium: grouped responses

Reason	%	Category	Category %
Attractiveness of building and grounds	16%	Quality	64%
General/nonspecific positive comment or endorsement (everything went smoothly/nothing went wrong)	12%		
Capable of meeting specific requirements of my faith	6%		
Quality of facilities (e.g. modern, well maintained)	6%		
Reputation/customer ratings	6%		
Standard of customer service/professionalism	5%		
Availability/waiting times	4%		
Size/capacity	3%		
Range of facilities (disabled access, parking, etc.)	3%		
What the staff are like	3%		
Better than the alternative crematorium	0%	Location	27%
Location/proximity	25%		
It’s the “family crematorium”	1%		
Only crematorium in the area	1%	Price	0%
Cremation fees/charges/cost	0%		
Another reason/no reason/refused/don’t know	9%	Other	9%

Source: Calculations based on CMA Funerals Market Investigation, *Crematoria Tables published 30/1/2020*, Table 387 Sheet T104. Note that the raw table appears to round all non-zero responses up to 1%: but in fact “Cremation fees/charges/costs” and “Better than the Alternative” only obtained 1 response each, which is less than 0.5% of responses, so should correctly round to zero. Memoria notes that the raw percentages reported in Table T104 sum to 103%: this has been renormalized to 100% in the percentages reported above.

<sup>31</sup> CMA Funerals Market Investigation, *Consumer survey results*, paras 96 and 97.

<sup>32</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.73.

<sup>33</sup> *ibid*, para 6.73.

<sup>34</sup> *ibid*, para 6.73 and Footnote 763.

<sup>35</sup> CMA Funerals Market Investigation, *Consumer survey results*, Table 28.



Therefore, those who have recent experience of using a crematorium focus very much on quality factors when thinking about why they would recommend that crematorium to somebody else. As stated in Memoria's response to the Working Papers, it is Memoria's experience that a family who has a disappointing experience of a crematorium will not recommend it to others, significantly damaging that crematorium's chances of future success.<sup>36</sup>

### 3.1.1. Differences in quality between crematoria

Memoria welcomes that the PDR recognises that, in relation to "measurable" aspects of quality, private crematoria offer (on average) higher quality compared with local authority crematoria.<sup>37</sup> However, despite this recognition, the PDR continues to assert that, overall, there are limited quality differentials between crematoria. In fact, the CMA states that it "did not find clear-cut evidence of systematic quality differentials between crematoria operated by private operators and those operated by local authorities", except for slot lengths and availability of certain facilities such as visual tributes (where private crematoria present higher quality).<sup>38</sup>

Memoria strongly rejects this factual characterisation. As set out in Appendix 5 to Memoria's response to Working Papers of 30 January 2020 (re-attached to this submission as Appendix 7), and in the local competitive assessments (prepared in the normal course of business) that informed the Appendix,<sup>39</sup> Memoria recorded substantial differences in quality between its own facilities and those of many local authority rivals in the areas where it operates. The CMA's position ignore the evidence that Memoria has submitted in its response to the Working Papers, and also that local authorities have only recently increased their investment to improve their (often old and outdated) facilities to compete with private operators.<sup>40</sup>

In the PDR, the CMA notes that "a comprehensive comparison of all aspects of quality between crematoria is not possible", and that "[t]here are many aspects of quality which are not measurable or quantifiable."<sup>41</sup> Despite this, the CMA has proceeded with making a grossly generalised statement with regard to an alleged lack of quality differentials between crematoria on the basis of a range of third-party sources all of which, by the CMA's own admission, present "certain limitations" (e.g. coverage).<sup>42</sup> More generally, although the PDR states that there was not such clear-cut evidence of quality differences in relation to qualitative measures, this is likely to reflect the inherent difficulty of comparing these less readily measurable quality differences across different sites. Just because a quality factor is not measurable or quantifiable, it does not mean that it does not exist, or that it is irrelevant. In effect, the CMA has chosen to ignore what it deemed too difficult to assess and, therefore, reached a conclusion on the basis of external sources with limited applicability.

One example of this is Memoria's analysis of Google reviews for its own and rival crematoria, showing that only 5% of reviews relating to Memoria mention 'poor quality', whereas 16% of reviews of its rival crematoria (which are a mix of local authority and private crematoria) do so.<sup>43</sup> The CMA notes these findings in the PDR, but simply states that they are "consistent with [its] analysis [...], which shows that crematoria (regardless of operator) receive relatively high customer satisfaction scores".<sup>44</sup> This

---

<sup>36</sup> Memoria's Response to the CMA's Working Papers of 30 January 2020, page 17.

<sup>37</sup> CMA Funerals Market Investigation, *Provisional Decision report*, paras 6.57, 6.79(c), and 7.230.

<sup>38</sup> *ibid*

<sup>39</sup> Full sources are provided in Appendix 7 to this submission.

<sup>40</sup> Memoria's Response to the CMA's Working Papers of 30 January 2020, Appendix 1 §1(a), Appendix 2 and Appendix 5 (re-attached to this submission as Appendices 3, 4 and 7 respectively); CMA Funerals Market Investigation, *Crematoria: evidence on competition between crematoria*, para 113 and Footnote 100; and Treske's Response to the CMA's Working Papers of 30 January 2020 <<https://assets.publishing.service.gov.uk/media/5f27f1b88fa8f57ac7fb399d/treske-.pdf>>.

<sup>41</sup> CMA Funerals Market Investigation, *Provisional Decision report*, paras 6.56 and 7.226.

<sup>42</sup> *ibid*, paras 6.57 and 7.229.

<sup>43</sup> See Appendix 3 to Memoria's response to Working Papers of 30 January 2020, reattached to this submission as Appendix 5.

<sup>44</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix L, para 27.

may be correct, but ignores the point that Memoria was making, i.e. showing that Memoria's crematoria perform significantly better in terms of customer feedback than its local rivals (helping to explain how it can be successful in attracting a larger proportion of out of area customers than other crematorium operators, and therefore making sites viable that may not be in other hands).

The CMA more generally appears to ignore evidence suggesting that private operators do, on average, provide a higher quality of service and, specifically, that these operators tend to draw a higher proportion of their demand from out of area. Table 23 of the PDR shows that the proportion of out of area funerals undertaken by local authority crematoria on behalf of Dignity funeral director branches in 2017 was only 20%, while the proportion undertaken by small private operators was 36%. This, despite apparently underreporting the proportion of out-of-area funerals undertaken by Memoria.<sup>45</sup>

The PDR accepts this, but then concludes that "[t]he facts that a material proportion of customers at both private and local authority crematoria are from out-of-area, and there is a wide variation in these proportions from across crematoria for all types of operator, indicate that not all out of area customers at private crematoria are customers who chose a private crematorium because of any superior offering or better value for money (relative to the customers' closest alternative), contrary to what Dignity, Westerleigh and Memoria have argued".<sup>46</sup> Further, it asserts without supporting evidence that the proportion of customers who may be considered marginal is "relatively limited".<sup>47</sup>

The first point is clearly a misstatement of Memoria's position. Memoria has never argued that *every* out of area customer represents a marginal customer, or one which has selected Memoria based on its quality or price rather than location.<sup>48</sup> However, clearly these are many customers for whom location was not the primary driver of their decision, and the fact that a higher proportion of private sector customers are out of area is at least consistent with the ability of these operators (including Memoria) to offer a sufficiently high-quality service that many customers are prepared to travel a little further to access it.

Whether or not the differences in quality can be simply correlated with private or local authority ownership, it is important to recognise that *given* that quality does differ between sites, and *given* that customers do care about quality, it is crucial that any market intervention that the CMA is minded to introduce does not limit the incentives and ability of crematorium operators to build and maintain a range of different crematoria, including those with a high quality offering. Otherwise, the CMA would be curtailing operators' ability to meet all the different needs and preferences of different families, and ensure that all families benefit from a good quality service at a price that represents good value for the quality provided.

It is also concerning that the CMA chooses to summarise the evidence it collected in relation to local authority crematoria responses to rival entry by saying that "only a limited number of local authority crematoria stated that they have made front of house improvements or extended slot lengths".<sup>49</sup> A review of the CMA's summary of its investigations with local authority crematoria in response to entry by Memoria suggests that most of them had taken some action (whether that be increasing slot lengths, reviewing prices, or bringing forward plans for investment in new sites) – or at the very least recognise that this entry created a more challenging competitive environment in which to operate.<sup>50</sup> The CMA's summary of these investigations is simply misleading, based on the information provided in Table 30 of the PDR.

---

<sup>45</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.113.

<sup>46</sup> *ibid*, para 6.114.

<sup>47</sup> *ibid*

<sup>48</sup> Neither can it be assumed that "in area" customers all selected the crematorium on the basis solely of location, of course.

<sup>49</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.79(d).

<sup>50</sup> *ibid*, Table 30.

Appendix 1 to this response summarises the particular competitor actions listed by Memoria in its previous submission, to which Table 30 of the PDR responds (not all of which are direct reactions to Memoria *entry*, but may rather be responses to the increased competitive pressure faced by these sites and volume losses since Memoria entered).<sup>51</sup> While not all of these are direct reactions to Memoria's entry, in Memoria's view many of them will be, and even those that are not a direct response to its entry will have been spurred on by the broader increase in standards across the sector and associated increases in consumer expectations. The table in Appendix 1 to this submission then checks whether the information provided by the CMA in Table 30 of the PDR is accurate, and the extent to which it actually contradicts or confirms Memoria's original observations.

As a general comment, Memoria notes that many of the statements relied on by the CMA do not appear to be responses to direct questions about whether or not these sites undertook the actions in question, but rather to be taken from broader responses to different questions. For example, the CMA cites references to the need to meet the needs of bereaved families as an apparent response to Memoria's comments on more specific actions taken by these crematoria since it entered. But, of course, the need to meet families' needs does not mean that competitive pressure does not *also* play a role in crematorium decision making, even by local authorities (and indeed the extracts of crematoria responses provided show that several local authorities recognise this to be the case).

Although the public service ethos will clearly be very present in public statements from local authority crematoria (as well as in the general "world view" of these operators; and indeed in the private sector, too), it is undeniable that crematoria also generate substantial revenues for local authorities. If significant revenues are lost to rivals, that will create pressure for those local authorities to improve their offer in order to recover revenues (even if this is not advertised in public statements).

In many cases, Table 30 of the PDR refers to responses not mentioning the specific action cited by Memoria, or responses that refer to different reactions to Memoria entry to the ones that Memoria noted. Table 30 of the PDR also notes that in four cases "[the CMA] have no information", although it does not make clear whether this is because the crematoria in question were not asked about the point, or did not respond to questions put. These are of course not evidence of a lack of competitor response to the competition provided by Memoria.

Memoria's responses to the particular points raised in Table 30 of the PDR (which only deals with the competitive actions of rival local authority crematoria, and not private sector rivals) are set out in Appendix 1 to this submission. It can be seen that in most cases Table 30 of the PDR either has nothing to say about the competitive action identified by Memoria, or confirms that some competitive action was taken (and in some cases additional competitive actions to those identified by Memoria). In several cases the CMA's rebuttal of Memoria's identification of competitive actions appears to be based on incorrect facts.

It is therefore highly misleading for the CMA to give just one affirmative example of a competitive action (while in reality the table contains many) and then claim that "other 'rival competitive actions' identified by Memoria appear an overstatement once contrasted with the evidence from the local authorities explaining the reasons for their actions."<sup>52</sup> The PDR also claims that "many local authorities stated that they did not take specific actions in response to Memoria's entry".<sup>53</sup> But this is not borne out of Table 30 of the PDR (which only lists two crematoria, Swindon and Gorleston, and does not deny that the crematoria did in fact improve their offerings after Memoria entered). It is therefore unclear on what basis the PDR draws this conclusion.

---

<sup>51</sup> Memoria Response to the CMA's Working Papers of 30 January 2020, Appendix 5 (reattached to this submission as Appendix 7).

<sup>52</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.179.

<sup>53</sup> *ibid*

Therefore while the CMA's shift towards a greater recognition of the importance of quality to consumers is welcome, the CMA needs to recognise the available evidence in relation to the important role that quality plays in driving *competition*.

Memoria is pleased that the CMA no longer attempts to imply that the entry analysis indicates a lack of quality differentiation between private sector and local authority crematoria. However, it is puzzling that all mentions of this hypothesis were simply dropped.

The CMA's original hypothesis (as set out in its Working Papers) was that "if there were a significant quality differential between private and local authority crematoria, and customers were willing to travel for a higher quality service, we might expect entry to affect volumes more strongly for local authority incumbents where the quality differential with a private new entrant may be greater compared to the impact on volumes at a private incumbent where any differential with a new entrant may be smaller. This does not appear to be the case."<sup>54</sup>

Yet, in the only case where the private coefficient is statistically significant (the 30+ minute category), this is +5% (i.e. the impact implied at private crematoria is positive, relative to the baseline of the negative impact on local authority volumes). That is, the CMA finds exactly the impact it would expect if the hypothesis that there is a significant quality differential were correct. Yet instead of recognising that the CMA's original hypothesis, as set out in its Working Papers, was supported by the data, the CMA simply drops the hypothesis altogether in the PDR.

### 3.1.2. *The importance of quality as evidenced by Memoria's business model*

Additionally, as submitted in Memoria's response to the Working Papers, if the only important factors driving choice of crematorium were (i) which crematorium is closest and (ii) which crematorium the family has used before, then Memoria would not be able to operate as a business. More specifically, Memoria would have not been able to convert:

- high (and increasing) shares of "core" area cremations; and
- significant shares of "battleground" cremations soon after entry (on average 40% across its sites).

The fact that Memoria is usually successful in winning a significant share of these "battleground" cremations, clearly shows that location is not always the determining factor in families' choice of crematorium. This is particularly true over time as a new facility builds a reputation. Table 3 (*below*) summarises Memoria's "core" and "battleground" shares of overall cremations at each of its sites in 2018. It can be seen that on average across all sites its "battleground" percentage is high, at 40% (i.e. a substantial proportion of demand comes from outside those areas where Memoria has a locational advantage). Given how recently Memoria entered in many of these areas, these high proportions of "battleground" sales are irreconcilable with the CMA's assertion that quality is unimportant, and that families choose crematoria primarily based on family history/connections and location. In fact, neither family history/connections nor location would sway significant numbers of "out-of-area" families towards Memoria sites. Memoria therefore does not recognise the CMA's factual characterisation on this point.

---

<sup>54</sup> CMA Funerals Market Investigation, *Crematoria: evidence on competition between crematoria*, para 92.

Table 3: “Core” versus “Battleground” cremation ratios by area (2018)

Site	Entry	Core	Core %	Battleground	Battleground %
South Oxfordshire (SOCM)	2015	639	46%	750	54%
Waveney (WMC)	2015	585	51%	573	49%
Amber Valley (AVM)	2014	631	51%	615	49%
South Leicester (SLM)	2015	704	57%	529	43%
Denbighshire (DMC)	2016	718	60%	483	40%
North Hertfordshire (NHM)	2017	695	72%	271	28%
Cardiff & Glamorgan (CGM)	2011	775	73%	291	27%
Kirkleatham (KMC)	2014	968	80%	240	20%

Source: FD by Area files submitted by Memoria in response to the CMA’s RFI of 8 May 2019.

N.B. Flintshire is excluded as it opened in summer 2018, and therefore does not have a full year of data. As noted above, these figures take account of a sub-district level assessment, and include all non-“core” customers as “battleground”, and therefore are more reliable than the CMA’s alternative processing of Memoria’s raw figures.

Based on its experience, Memoria expects that private operators (with their generally higher quality offering) would tend to have a higher proportion of customers from out of area. In Memoria’s view, private operators’ relatively high share (33%) of “out-of-area” customers at their facilities (and a higher proportion for Memoria, at around 40%) is also consistent with the higher quality offer of private crematoria, as set out above. It can be seen that this proportion contrasts starkly with the Survey results (which will have included primarily customers of local authorities, due to their higher market share), where only 14% of respondents stated that they did not use the closest crematorium.<sup>55</sup>

Unfortunately, given that the Survey did not ask respondents which crematorium they used, it is not possible to distinguish between private and local authority sites when interpreting the Survey results directly (or between new and old crematoria, which might also give some indication of quality). However, the distinction between the survey results and the actual patterns of demand observed at private crematoria is strongly suggestive that private crematoria are more effective at drawing customers from “out-of-area”, which they can only do by offering higher quality and/or better value for money. This also appears to be confirmed by the Westerleigh survey (as set out above).

By contrast, the PDR argues that “private crematoria do not need to compete for out-of-area customers in order to break even given that new private crematoria have a large ‘captive’ customer base, by virtue of their location close to poorly served population centres (a requirement to obtain planning permission).”<sup>56</sup> The CMA appears to conclude from this that there is no need for private crematoria to compete out of area or to offer a high quality of service in order to support their business model. At least in relation to Memoria’s business, this is simply and clearly wrong.

Memoria has previously submitted calculations showing that its crematoria simply would not be viable if they operated only to draw demand from their “core” areas (and indeed, even within Memoria’s “core” customers, there will be many whose decision is also driven by other factors and for whom the locational advantage of the Memoria site may be rather marginal). Table 4 (below) creates a hypothetical model of Memoria’s P&L based on forecast models created for two of its sites with typical proportions of “core” and “battleground” customers at around the group average.<sup>57</sup> In each case, Memoria presents both the modelled P&L for 2019 and for the first year in which the site was forecast to reach “steady state” ([X]) at North Herts; and ([X]) at Waveney). It also presents the synthesised P&L in a situation where Memoria lost its “battleground” customers and was only able to attract “core” customers.

<sup>55</sup> CMA Funerals Market Investigation, *Consumer survey results*, Question C11: “So far as you are aware, is this the closest crematorium to where the deceased person lived?”

<sup>56</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.192.

<sup>57</sup> Memoria would be happy to provide equivalent calculations for its other sites to the CMA upon request.

Table 4 (below) shows for each site 2019 and “steady state” revenue and cost line items. For simplicity, the calculation assumes that income and direct costs (including the cost of memorials) are to fall proportionately with the number of cremations (which would fall [REDACTED]%, in line with the group average proportion of “battleground” cremations), while other costs would remain fixed.<sup>58</sup>

Table 4: Impact of loss of “battleground” customers on viability of Memoria crematoria

	North Herts Memorial				Waveney			
	Forecast		Core only		Forecast		Core only	
	2019	2021	2019	2021	2019	2020	2019	2020
Cremations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Income	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Income/cremation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Direct Costs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
D.Cost/cremation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Payroll	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cost of Memorials	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Administration Costs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Property Expenses	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Gross margin</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>% reduction</b>			[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]

Source: sensitivities to files submitted to the CMA, S1 AA Q4 App 9\_Waveney Model 2014 09 16.xlsx and S1 AA Q4 App 7-North Herts Memorial Model 2016 04 29 AGREED MODEL.xlsx, supplied in response to CMA RFI of 8 May 2019

It can be seen that, at both crematoria, this approach would mean losses for 2019 (i.e. prior to achieving “steady state” volumes), even at gross margin level (i.e. prior to financing costs and taxation). Moreover, even once the sites achieved steady state (in [REDACTED] and [REDACTED] respectively), [REDACTED] for North Herts Memorial, and by [REDACTED]% for Waveney. [REDACTED]. For example, even if [REDACTED] for North Herts and [REDACTED]% for Waveney. Even if, [REDACTED]% and [REDACTED]% respectively. [REDACTED].

It can therefore be seen that in both cases these marginal “battleground” customers are absolutely critical to earning a return that can start to compensate investors for the high levels of capital employed (bearing in mind that according to the CMA’s own analysis, [REDACTED]).<sup>59</sup> Even on the assumption that some (limited) staff costs and/or investment costs could also be saved if Memoria were not attempting to attract customers from outside its “core” area, the amounts involved would be minimal given that sunk land and building costs would be unchanged.

The fact that Memoria does not discriminate in terms of price or quality against “core” customers cannot be seen as evidence of a lack of competition, contrary to the CMA’s apparent view.<sup>60</sup> Further, Memoria not discriminating in this way means that the service and prices offered to its “core” customers (who might not switch to other crematoria even if prices were to increase, or quality to fall) are protected by the need to attract battleground customers to make Memoria’s sites commercially viable. If Memoria did not offer a quality of service and price combination that allowed it to draw customers from beyond its “core” area, and if customer decisions were primarily driven by location and family history rather than also by quality and price, Memoria would simply not have been able to

<sup>58</sup> These are described in more detail in Memoria’s response to the CMA’s Working Papers of 30 January 2020.

<sup>59</sup> [REDACTED].

<sup>60</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.105: “in a context where the demand-side is largely unresponsive to alternative competitive offers, and where there is no price discrimination, competition between a small number of players is unlikely to lead to competitive outcomes”. Memoria continues to dispute the assertion that the demand side is unresponsive in this market.

create a successful business. An alternative strategy of providing worse service and facilities, and simply relying on “core” customers, would be bound to fail.

The CMA responds to this submission (and an apparently similar submission from Westerleigh) on the basis of calculating that any crematorium gaining planning permission would be the closest crematorium for between 980 and 1,300 cremation customers per year. Additionally, the CMA also bases its response on evidence from investment appraisals that new crematoria typically expect to conduct around 1,000 cremations per annum, at which point they expect to make high EBITDA margins (at typically 50% or more).<sup>61</sup> The implication appears to be that any crematorium that has obtained planning permission should be able to survive on the basis of core customers alone. This is simply incorrect.

The figures used by the CMA, in fact, overstate the number of “core” customers that a new crematorium could expect to serve. In practice the 136-171,000 population areas that the CMA uses in its calculation will refer to the number of people for whom the proposed crematorium is either the closest *or similarly close* to existing crematoria. Therefore, in reality, it will include some “battleground” as well as “core” customers. In Memoria’s experience a new crematorium could not expect to draw on as many as 900-1300 “core” customers.

The relevance of the expected EBITDA of these sites as a percentage of sales is also in any case not explained. Clearly, capital intensive businesses will need to earn a high return on sales in order to cover their cost of capital. The need to cover the cost of capital is precisely the reason why the CMA generally relies on ROCE analyses of profitability in capital intensive markets. It is unclear why the PDR takes a different approach in this case. Regardless of the forecasts of other crematorium operators, the reality of Memoria’s situation is that it typically takes around 40% of its volumes from “battleground” areas, where it has no clear locational advantage over its rivals. Without attracting these volumes (using its superior quality offer), Memoria has already shown above that these sites would not be attractive investments.

The CMA does then turn to a ROCE analysis. However, it simply reports the *average* ROCE (based on the CMA’s own profitability analysis) of crematoria conducting fewer than 1,300 cremations in 2018, noting that 5 of the 8 operators reviewed earned a ROCE above WACC.<sup>62</sup>

Of these 8 operators, Memoria only has access to the CMA’s analysis of its own profitability, which clearly does not show [REDACTED] and, therefore, it cannot sustain the assertion that crematoria are generally highly profitable at low volumes. [REDACTED] (which include a substantial proportion of out-of-area customers). The point that Memoria has made (and which the PDR does not address), is that [REDACTED].

It is therefore unclear what conclusions the CMA intends to draw in relation to Memoria’s submission on this point. Even if it were correct that some other crematoria (e.g. those with highly depreciated capital) could make a reasonable return on this (limited) capital with only in-area volumes (which the CMA’s analysis in any case does not establish), it remains a clear fact that Memoria cannot. To the contrary, Memoria must win customers from outside its “core” area, which it is only able to do by offering a very high quality of service. Nothing in the CMA’s analysis undermines this point.

Moreover, the CMA’s analysis of ROCE for other sites may well be inflated by the use of an extremely crude land valuation for sites built more than 10 years ago and, at least for Memoria (and any other providers who depreciate their assets over fewer than 100 years) the cost of depreciation of buildings will also be understated (overstating profitability). The CMA appears to draw comfort from the fact that two of the three operators earning a ROCE below WACC are operating “relatively new crematoria”. However, this is incorrect on two counts:

---

<sup>61</sup> *ibid*, paras 6.132-6.138.

<sup>62</sup> *ibid*, paras 6.139-6.140.

- (i) as set out in the discussion of profitability below (and in previous submissions), [REDACTED]. Therefore, the CMA's assertion that "the results of these two operators are unlikely to reflect the profits that the operators might expect to earn once their crematoria reach maturity"<sup>63</sup> is unfounded [REDACTED]; and,
- (ii) the observation that crematoria that appear less profitable on the CMA's measure rely more heavily on recently built crematoria (where the CMA has used actual rather than hypothetical land values) is equally consistent with the CMA's methodology understating land and buildings values for older sites (thereby it overstates profitability as a return on capital).

*3.1.3. The CMA's analysis of price/quality differentiation and success in winning out of area customers is weak*

Finally, the PDR presents an analysis of the relationship between out-of-area customer proportions and prices or quality metrics, finding relationships that are "weak".<sup>64</sup> Although the PDR does not make clear what inferences the CMA draws from this, it appears to be presented as part of the CMA's case that competition in relation to these factors is not intense.

Unfortunately, the CMA has not been prepared to share the PDR's underlying data or analysis with Memoria or its advisers. Therefore Memoria cannot comment in detail on the reliability of the CMA's analyses, which significantly impedes Memoria's right to be heard on the point. Memoria also notes that, during the putback process for the Working Papers (during which the CMA's calculation of Memoria's own out-of-area shares were instead provided), the CMA's figures in relation to Memoria's "out-of-area" shares did not align with Memoria's own records.

During the response period for the Working Papers, the CMA provided Memoria with the data it used to construct its figures (which, absent any indication to the contrary, Memoria assumes are still being used for the latest analysis).<sup>65</sup> These are raw data by district, which do not reflect the geographic classifications used by Memoria in the normal course of business, whereby Memoria also looks at narrower areas within districts to assess whether they can be considered "core" or not. Indeed, the CMA's analysis file notes Memoria's comment that [REDACTED]. This is precisely the type of adjustment within district that is done by Memoria in preparing its own "out-of-area" figures in the normal course of business, unlike those reconstructed by the CMA based on raw data.

Memoria also notes that the CMA's analysis appears to entirely ignore volumes classified in the raw data as "out of area", rather than treating them as "battleground", which would instead be appropriate given these are non-"core" customers. In Memoria's view this raw analysis is not reliable and should be replaced with the "FD by area" figures supplied by Memoria in response to the CMA's RFI of 8 May 2019, and re-supplied (in summary form) in Memoria's response to the CMA's putback process on 22 January 2020.<sup>66</sup> Therefore, the CMA cannot rely on its own "out-of-area" analysis until the numbers for Memoria are corrected. As a result, the present CMA analysis is incorrect.

However, even without access to the full underlying data and analysis (and even without reflecting the necessary corrections to the Memoria figures), Memoria notes that the inability to find strong relationships in very simplistic models relating only "out-of-area" proportions to one factor at a time (i.e. price or slot length, but not both) is hardly surprising given the complex differentiation of cremation services.

---

<sup>63</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.140(d).

<sup>64</sup> *ibid*, paras 6.117-6.127.

<sup>65</sup> "Out-of-area proportion calculations for Memoria.xlsx" provided by the CMA to Memoria on Monday 20<sup>th</sup> February 2020.

<sup>66</sup> "FD by Area" files provided as part of Memoria's response to Schedule 2, Annex A, Question 26 of the CMA's RFI of 8 May 2019; CMA putback (1), *Memoria - draft extracts from the Crematoria: evidence on competition between crematoria Working Paper*, Table 2; and e-mail attachment sent by Diana Jackson to Andy Toner on 22 January 2020 at 17.59 (which includes cell references to the underlying FD by Area data files submitted previously).



For example, if customers were prepared to pay more for a longer slot, then high price sites might attract significant “out-of-area” demand only if they also offer a longer slot. If the market were characterised by some high-priced sites with long slots, and some with short slots then, by controlling for only one aspect of the PQRS (price, quality, range and service levels) offer at a time, the CMA’s analysis would simply find no effect (despite customers valuing both price and slot length). The same applies to other elements of quality/differentiation (e.g. customer satisfaction; size of crematorium; or size of cremator).

In fact, the relationships observed do appear in general to have the expected sign (i.e. lower prices relative to rivals; longer slot lengths relative to local rivals; or the nearest rival being local authority rather than privately run, are associated with higher out-of-area proportions). However, the fact that the relationships observed are weak is likely to reflect the crude nature of the exercise and the lack of controls for other factors that would influence the out of area proportion of customers, rather than any lack of “true” underlying relationship between these factors.

#### *3.1.4. Conclusions on the importance of crematoria quality for bereaved families*

In light of these considerations, Memoria believes that the CMA’s provisional conclusions, as set out in the PDR, are fundamentally misleading insofar as they dismiss the critical importance of quality to families. Memoria’s entire business model is based on engaging in competition by attracting “battleground” customers with its high quality offer, which proves the non-homogenous nature of the market both in terms of product type and level of quality. The fact that Memoria is usually successful in winning a significant portion of “battleground” cremations soon after entry, even where rivals are more closely located and/or have been previously used by the bereaved family, clearly shows that crematoria offerings are differentiated, and that diverse offerings and quality play a fundamental factor in families’ choice of crematorium. To claim anything else puts assertion over and above evidence.

#### 3.2. Importance of price to customers

Memoria acknowledges that in the CMA’s Survey few respondents stated that price was an important factor when choosing a crematorium, and that only 15% of those respondents who stated that they compared crematoria did so on the basis of price.<sup>67</sup> Indeed, Memoria has stated that “price, within reason, is not usually a consideration for most families”; although it is disappointing that the CMA has, once more, chosen to selectively cut this statement and omit that Memoria was only referring to families attending a service (as opposed to the rising number of customers choosing unattended direct cremations).<sup>68</sup> This, despite Memoria’s request that the CMA consider this statement in its entirety.<sup>69</sup>

Nevertheless, in particular due to the Survey’s small sample size and lack of information on site used (including very few Memoria customers; and failing to distinguish customers of private vs publicly owned crematoria, or new versus old sites), Memoria does not believe that it presents sufficient and credible evidence for the CMA to categorically deny the presence of price competitive interactions in the cremation market. It is Memoria’s experience that customers are very assertive on price insofar as they expect and demand good value for money. The nominal value of the cremation fee may not be their most important consideration, but every Memoria customer expects that fee to get them the very best for their family.

Memoria has provided the CMA with extensive evidence on how it sets its prices, and it has explained how it aims to win at least 100% of each site’s potential “core” area customers.<sup>70</sup> To do so, Memoria

---

<sup>67</sup> CMA Funerals Market Investigation, *Consumer survey results*, Tables 26 and 27.

<sup>68</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.37(b); and Memoria response to initial market study RFI, page 16.

<sup>69</sup> Memoria putback - draft extracts from the Crematoria: evidence on competition between crematoria Working Paper submitted on 16 January 2020, para 17(b).

<sup>70</sup> CMA Summary of hearing with Memoria Limited held on Thursday, 18 July 2019, para 28-37.

sets different prices at every crematorium to compete most effectively in each individual market area.<sup>71</sup> Additionally, Memoria assesses its competitors' position on pricing and quality in order to ensure that it is responsive to competitive conditions and changes in a particular local market.<sup>72</sup> Therefore, Memoria rejects the CMA's conclusion that "crematoria across the UK generally appear to face limited competitive constraints when setting prices".<sup>73</sup>

In its response to the Working Papers, Memoria has already submitted that this characterisation does not fit with its factual experience of the cremation market, whereby its price benchmarking exercise is a key driver of its own fees. In fact, as Memoria has explained to the CMA, in the instances where Memoria has judged prices incorrectly relative to local competitors (i.e. when Memoria does not offer good value for money relative to its rivals) it loses volumes as a result. This, despite the fact that Memoria works very hard to minimise the extent of these errors by taking full account of the competitive landscape and feedback from Funeral Directors when setting prices in the first place.<sup>74</sup>

It is disappointing to see that the CMA has fundamentally misunderstood Memoria's statements discussing price increases and volume shifts and, therefore, has reached a provisional conclusion in the PDR that is simply factually wrong.<sup>75</sup>

In one instance, the CMA said that it saw no evidence of any cuts in fees at the [REDACTED] crematorium since 2015, despite Memoria's submission that a price reduction in 2017 led to a [REDACTED]% volume increase at the site.<sup>76</sup> Indeed, Memoria did not cut nominal fees at [REDACTED] in 2017. However, Memoria introduced lower priced options at this site that led to a drop in the crematorium's average income per cremation.<sup>77</sup> This was particularly important to make the [REDACTED] crematorium more attractive to local families who, on average, come from a relatively lower-income background. As a result, Memoria saw a [REDACTED]% volume increase at [REDACTED] that clearly shows customers' overall responsiveness to price.<sup>78</sup>

In a second instance, the CMA used Cremation Society data to reject Memoria's submission that a 2018 price increase at its [REDACTED] crematorium led to a volume reduction. This data, the CMA argues, shows instead that the site's volumes had been falling since 2017 (before the price increase).<sup>79</sup> Indeed, volumes at [REDACTED] had started falling in 2017 due to [REDACTED] entry in the local market with the opening of [REDACTED] crematorium in 2016. However in 2018, two years after [REDACTED] entry, volumes at [REDACTED] continued to fall due to Memoria's price increase, which made the site less attractive to customers when compared with local competitors, including [REDACTED].<sup>80</sup> This is further evidenced by the fact that, following a price correction, volumes at [REDACTED] rose again to [REDACTED] cremations in 2019 (i.e. 2017 levels) despite a significant reduction in the death rate.<sup>81</sup>

Moreover, Memoria urges the CMA to consider market penetration figures which, unlike volumes, are not influenced by fluctuations in the death rate (and therefore constitute a more objective measurement). In 2016 [REDACTED] crematorium's market penetration was [REDACTED]%. Following the opening of

---

<sup>71</sup> Transcript of CMA hearing with Memoria Limited held on Thursday, 18 July 2019, page 34 lines 2-6.

<sup>72</sup> CMA Summary of hearing with Memoria Limited held on Thursday, 18 July 2019, para 28; Transcript of CMA hearing with Memoria Limited held on Thursday, 18 July 2019, page 27 lines 14-24.

<sup>73</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.78

<sup>74</sup> Memoria's response to the CMA's Working Papers of 30 Jan 2020, para 3(b).

<sup>75</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.41.

<sup>76</sup> *ibid*, para 6.41.

<sup>77</sup> Memoria's Amber Valley crematorium's 2017 price list supplied in response to CMA RFI of 8 May 2019.

<sup>78</sup> Memoria's response to the CMA's Working Papers of 30 Jan 2020, Appendix 5, slide 26 (NB: slide 26 reference to a 2017 price cut should read "introduced lower-priced options") (reattached to this submission as Appendix 3); Volumes extracted from S2 AA Q16 appendix 1 - average bookings per funeral director, supplied in response to CMA RFI of 8 May 2019.

<sup>79</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para, para 6.41.

<sup>80</sup> [REDACTED].

<sup>81</sup> [REDACTED].

[X] crematorium, [X] market penetration fell to [X]% in 2017. This dropped further to [X]% in 2018, two years after [X] entry, because of Memoria's fee increases.<sup>82</sup> Finally, following a price correction, [X] market penetration rose to [X]% in 2019.<sup>83</sup> That is in excess of 2017 levels and only two points below 2016 levels (i.e. before [X] entry).

In other instances, the CMA mentioned that "Memoria cited a number of examples" showing the relationship between price and volume fluctuations, which the CMA was "unable to test".<sup>84</sup> Further, the CMA says that Memoria provided "a fifth example of a crematorium winning volumes after a rival increased its prices but [the CMA does] not have relevant data to verify this".<sup>85</sup> Memoria finds the CMA's approach entirely lacking in transparency and, therefore, impossible to respond to. If the CMA wants to dismiss evidence that Memoria has submitted as part of this market investigation, it should cite each example specifically and refute its contents. Should the CMA require additional information to conduct such analysis, Memoria would be happy to provide any relevant data that it holds. Memoria notes that it has received no such request from the CMA to date.

In any event, Memoria has already provided ample evidence of the relationship between price and volume fluctuations in its Working Paper responses, some of which the CMA has failed to take into account in the PDR entirely.<sup>86</sup>

One such example relates to Memoria's South Oxfordshire crematorium, where documentation submitted to the CMA showed how Memoria initially set fees at a relatively low price to encourage local families to use its site and experience the quality offer, only to increase prices over time once that quality was established (though, only at a rate that was consistent with achieving continued volume growth). Despite these investments and careful monitoring of rival offers, Memoria has nonetheless seen volume losses at South Oxfordshire to rivals providing a more competitive offering: e.g. 2019 losses from the Farringdon and Carterton areas, when Swindon crematorium introduced a new (longer) 40-minute time slot, which significantly reduced its price per minute.<sup>87</sup>

In light of the considerations and of the evidence presented above, Memoria fully rejects the CMA's conclusion that customers do not recognise that cremation fees vary between crematoria.<sup>88</sup> Although the Survey suggests that customers are not willing to list price as a relevant factor in their decision making,<sup>89</sup> the strategic decisions that Memoria makes in the normal course of business demonstrate that in reality it cannot (and does not) price independently of its rivals. Doing so would result in significant losses of volumes which, in turn, could entirely undermine the basis on which Memoria is able to earn a return on its investments.

Finally, the CMA has stated that it is rare that funeral directors push back against cremation fee increases, citing the 2019 [X] example that Memoria submitted (i.e. increasing prices in excess of what customers felt was justified by its superior quality offering) as a rare exception, not the rule.<sup>90</sup> Memoria does not dispute that such examples are rare. However, the CMA misses the point when it comes to understanding why funeral directors do not push back more often against crematoria on fees. The CMA is incorrect in concluding that, because "cremation fees are passed on directly [...] to the

---

<sup>82</sup> Memoria's [X] crematorium's 2016-2018 market penetration figures supplied in response to CMA RFI of 8 May 2019; Memoria's response to the CMA's Working Papers of 30 Jan 2020, Appendix 5 slides 36-37 (reattached to this submission as Appendix 7).

<sup>83</sup> Memoria would be happy to provide the CMA with 2019 market penetration figures for [X], which are currently outside this Funerals Market Investigation's evidence timeframe.

<sup>84</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.41 and FN 723

<sup>85</sup> *ibid*, para 6.41.

<sup>86</sup> *ibid*, para 6.41; and Memoria's response to the CMA's Working Papers of 30 Jan 2020, para 3(b)(i) page 8

<sup>87</sup> Memoria's response to the CMA's Working Papers of 30 Jan 2020, para 3(b)(i), and Appendix 5 slides 28-35 (reattached to this submission as Appendix 7).

<sup>88</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.78(a)

<sup>89</sup> CMA Funerals Market Investigation, *Consumer survey results*, Tables 26 and 27.

<sup>90</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.53 and 6.78(d)

customer, funeral directors have limited incentives to keep the cost of this aspect of the funeral service low.”<sup>91</sup> This ignores the basic fact that, if the cost of the cremation is high, so will be the overall cost of the funeral paid by the family to the funeral director. As family budgets tend to be finite, an expensive cremation will ultimately reduce a customer’s appetite to spend on other aspects of the funeral service, which constitute the bulk of the funeral director’s revenues. Therefore, it is in the funeral director’s interest to keep crematoria fees in check.

[X] was one extreme example in which Memoria’s pricing was considered so out of line that the local funeral directors immediately responded to that error with both direct feedback (i.e. demanding a price reduction) and by reducing the number of funeral bookings at the site. This happened very quickly, and Memoria reversed its price increase less than a month after it was imposed.<sup>92</sup> This clearly evidences that crematoria do not operate in a vacuum when setting prices.

Ultimately, the lack of additional examples lamented by the CMA as a reason to dismiss the above instance as an isolated case is due to the fact that Memoria very rarely prices its services out of line with the market. As already submitted to the CMA, Memoria engages in extensive consultations with all stakeholders, including funeral directors, before every price adjustment to ensure that its fees (i) reflect the quality of its offering; (ii) remain competitive against other local crematoria; and (iii) provide customers with good value for money.

Therefore, in light of its own experiences, including those set out above in relation to South Oxfordshire, South Leicestershire, Amber Valley and Cardiff, Memoria has provided factual evidence to the CMA that customers and funeral directors will take price into account when choosing a crematorium (i.e. when better value for money can be found slightly further away). Indeed, as shown in its response to the Working Papers and in §§ 3.1.2 and 3.3 of this response, Memoria’s business model serving a significant number of “out-of-area” families (typically [X] of its customers) is only viable because sufficient number of customers believe that Memoria offers excellent value for money, which is sufficient to draw them to use a crematorium that is not their closest, or one with which they do not have a longstanding family association.

### 3.3. Importance of location to customers

The CMA draws on a range of evidence in the PDR in relation to the geographic distance over which crematoria compete, but in each case interprets the evidence in a way that understates the true extent of competition between crematoria, at least in relation to the locations where Memoria operates. In particular, the PDR concludes that customers do not generally feel that they have a choice of crematoria, and few compare between two or more crematoria, with customers instead choosing a crematorium “on the basis of location or familiarity” resulting in crematoria facing “limited competitive constraints” when setting price and quality.<sup>93</sup> Moreover the CMA asserts that the majority of competitive interactions take place within a narrow catchment (18 minutes at standard drivetimes, or 30 minutes at cortege speed), with most crematoria then facing little if any competition within this catchment.

This is a complete mischaracterisation of the market, and simply does not fit with Memoria’s experience or business model. This has been discussed at length in Memoria’s previous submissions. For completeness these points are reiterated below and, where the CMA has responded to Memoria’s points, the position taken in the PDR is further assessed.

#### *3.3.1. The CMA recognises that location is not the only factor of importance to consumers*

---

<sup>91</sup> *ibid*, para 6.78(d)

<sup>92</sup> Memoria’s response to the CMA’s Issues Statement of 8 April 2019, pages 5-6; and CMA Summary of hearing with Memoria Limited held on Thursday, 18 July 2019, para 36.

<sup>93</sup> CMA Funerals Market Investigation, *Provisional Decision report*, paras 6.75-6.79.

As noted in relation to quality above, the CMA recognises in the PDR that “the overall quality of the cremation service they receive is generally important to customers” and that “personal experience of using a crematorium is the second most important reason in the choice of crematorium cited by customers (after location)”.<sup>94</sup>

This statement, however, underplays the practically equal balance between location and quality factors when considered together (given that the survey disaggregated location considerations into fewer categories than it did for quality considerations). As set out in § 3 of this response (*above*), when considering the most important factors for customers in choosing a crematorium, the Survey shows quality factors as playing a similar or even stronger role than location in driving choice and recommendations. Although many customers may have had a strong prior view on which crematorium they preferred (and may not have “shopped around” in relation to the last cremation they arranged), that view was not formed in the abstract, but rather was based on the experience of quality, convenience and price that they had gathered themselves or from trusted others. If Memoria did not maintain high quality standards across its crematoria (as well as good locations and reasonable prices), then it would fully expect to lose business, and the factual results of the Survey strongly support this view.

The fact that location is *also* important to customers is hardly surprising, and is not unique to the crematorium market. Would the CMA similarly conclude that if the location of a supermarket or DIY store was important to consumers – as it surely must be – that there must then be “limited” scope for them to compete on any other metric (e.g. price, quality)? This cannot be right.

3.3.2. *The CMA’s assessment of catchment areas and geographic closeness continues to understate the distances over which crematoria meaningfully compete*

Disappointingly, the CMA continues to focus on a catchment area including only those rivals located within a 30 minute drive time *at cortege speed* (i.e. only around 18 minutes at normal driving speed).<sup>95</sup> As Memoria has set out in detail in previous submissions, this is far too narrow to properly capture the majority of competitive interactions in the crematorium market.<sup>96</sup> Memoria’s views on the *evidence* on catchment area are discussed further below.

More generally, Memoria also has concerns over the *interpretation* that is placed on a small number of local competitors. It is correct that crematoria tend not to locate directly next to one another, but rather differentiate themselves according to location (among other factors). In fact, given that crematoria are capital intensive investments, if they did not do this then it would simply be impossible to invest. If crematoria do not offer a service that is differentiated from their rivals, they will be unable to cover their costs and make a return on capital. This would result in a lack of new investment and (in extreme cases) market exit.

It is therefore illogical to compare the geographic structure of the crematoria market to other less capital intensive retail markets where competitors may be able to make a return on capital with a more densely populated set of sites. Simply noting that the number of local rivals tends to be “low”, without considering whether the market would be able to function well (or at all) if this were not the case, is to set up an entirely hypothetical benchmark against which to compare crematoria market outcomes.

- Evidence: internal documents

Evidence from Memoria’s internal documents clearly demonstrates that Memoria does not only compete with rivals within either an 80% catchment area (defined by the CMA as a 33-minute drive at cortege speeds, or 20 minutes at normal speed) and/or a 30-minute cortege speed drive time catchment

---

<sup>94</sup> *ibid*, para 6.79(a).

<sup>95</sup> *ibid*, para 4.47.

<sup>96</sup> Memoria response to The CMA’s Working Papers of 30 January 2020, § 3.

(18 minutes at normal speed).<sup>97</sup> As part of its response to the CMA’s RFI of 8 May 2019, Memoria submitted documents which set out which rivals it monitored in terms of pricing and quality when making its own price and quality decisions. Table 5 (below) lists the rivals (including their distance and drive time) that are tracked by each of Memoria’s sites when setting prices and considering investments in refurbishments/improved quality.

Table 5: Distances and drive times to rivals monitored by Memoria

Memoria Site		Rival	Drive distance (miles)	Drive time (minutes)
AVM	Amber Valley	Markeaton	14	17
		Mansfield	11	18
		Bramcote	17	22
		Chesterfield	18	23
		Trent Valley*	19	24
BMC	Barnby Moor	Doncaster	3	3
		Gainsborough*	13	23
		Babworth	13	23
		Sherwood	21	26
		Rotherham #	17	29
CGM	Cardiff & Glamorgan	Thornhill	13	17
		Coychurch	18	24
		Newport #	29	37
DMC	Denbighshire	Colwyn	14	17
		Flintshire	19	22
		Chester	31	35
		Wrexham	40	43
FMC	Flintshire	Chester	12	18
		Denbighshire	19	21
		Pentrebychan	22	27
KMC	Kirkleatham	Teeside	9	10
		Stockton*	17	21
		Hartlepool	23	28
		Darlington	28	34
		Scarborough	43	65
NHM	North Hertfordshire	Vale Crematorium	9	13
		Harwood Park	14	22
		Bedford	19	28
		Cambridge #	37	46
		Cam Valley #	33	46
SLM	South Leicestershire	Great Glen	6	11
		Gilrose	9	19
		Hinckley*	13	24

<sup>97</sup> CMA Funerals Market Investigation, *Crematoria: background and market structure*, para 18 and Footnote 11. On the basis of the CMA’s analysis 80% catchment areas covered 33-minute cortege speeds (at 60% of nominal driving speed, this translates to a 20-minute normal drive time, while the CMA’s preferred 30-minute cortege speed translates to an 18-minute drive time).

Memoria Site		Rival	Drive distance (miles)	Drive time (minutes)
		Nuneaton	20	30
		Rugby	18	32
		Kettering	26	33
SOCM	South Oxfordshire	Oxford	15	25
		<i>North Oxfordshire*</i>	18	25
		Swindon	23	34
		Thatcham	28	39
		Banbury	36	40
WMC	Waveney	Gorleston	14	26
		Earlham	23	36
		Scoulton*	39	51
		Seven Hills	39	55
		West Suffolk	50	67
Average			21	29
25th Centile			14	21
Median			19	26
75th Centile			28	35

Source: CRA analysis based on Memoria Competitor Price Comparison documents, submitted in Memoria's response to the CMA RFI of 8 May 2019, Schedule 2, Annex A, Question 12. Distances and drive times have been taken from the CMA's calculations where provided – but otherwise using ArcGIS, and may differ from the distances recorded in Memoria's internal documents.

*Italics indicate cases where Memoria compares prices with its own sites.*

\* Indicates new sites that have recently opened or soon to open (Hinckley).

# Indicates sites that have been added to the list monitored by Memoria since previous submissions were made due to shifts in demand (i.e. increases in demand or potential demand in areas where the newly listed rival is a key alternative).

It can be seen that, contrary to the CMA's cortege-based catchments, Memoria monitors the prices and quantities of rivals much farther than a 18-20-minute normal drive away. Indeed even the *average* standard drive time to the rivals that Memoria tracks is significantly further than this at 29 minutes (and the median is 25 minutes, with an interquartile range from 21 to 35 minutes at normal driving speeds). Based on cortege driving speeds, this means that *Memoria takes account of rivals located on average a 48-minute drive away* (with a median of 43 minutes and interquartile range of 35-59 minutes at cortege speed). This is strong factual evidence, which the CMA does not appear to consider in its discussion of geographic market definition in the PDR.

Memoria has also submitted a number of documents that it uses in the normal course of business to track rival prices and quality in order to ensure that its own offering is competitive (particularly when price changes are made).<sup>98</sup> The risk of losing volumes to rivals (e.g., if prices are increased too far) is also mentioned as a constraint in other areas, even in relation to rivals that are right on the edge of (or even outside) the PDR's proposed 18 minute catchment (at standard drive times). For example:

- Thornhill is mentioned as a constraint on Cardiff and Glamorgan (CGM) – 17 minutes away
- Teesside is mentioned as a constraint on Kirkleatham (KMC) – 10 minutes away;
- Markeaton and Mansfield are mentioned as constraints on Amber Valley (AVM) – 17 and 18 minutes away;
- Banbury and Oxford are mentioned as constraints on South Oxfordshire (SOCM) – 25 and 40 minutes away;
- Not only Great Glen (11 minutes away) but also Gilroes and Rugby are mentioned as constraints on South Leicestershire (SLM) – 19 and 32 minutes away;

<sup>98</sup> Memoria: Competitor Price Comparison spreadsheets used to inform annual price setting for each of its sites, supplied in the appendices to Schedule 2 Annex A Question 12 of its response to the CMA's RFI of 8 May 2019.

- Colwyn Bay and Wrexham are mentioned as constraints on Denbighshire (DMC) – 17 and 43 minutes away; and
- References are made to the risk of losing volumes not only to Vale (13 minutes) but also to Bedford from North Hertfordshire (NHM) – 28 minutes away.

In Appendix E to the PDR, the CMA briefly mentions the existence of these documents and claims to have taken them into account “through an assessment of the documents referred to” (though it does not state where this assessment is presented), though it concludes that market definition should identify the “most relevant and closest” competitive constraints.<sup>99</sup> However, this does not explain or justify the use of the particular threshold applied by the CMA, neither does it justify ignoring the substantial competitive constraints that are clearly imposed from outside an 18 minute drive time.

Finally, Memoria’s internal tracking of core and battleground customer numbers (already discussed in some detail in § 3.1, *above*) also points to substantial competition emanating from beyond those customers for whom its crematoria are “closest”. If the only important factors driving choice of crematorium were (i) which crematorium is closest; and (ii) which crematorium the family has used before, then Memoria would have not been able to attract significant shares of battleground cremations within a couple of years of entry (accounting on average 40% of demand across its sites).

The fact that Memoria is usually successful in winning a significant share of these “battleground” cremations clearly shows that location is not always the determining factor in families’ choice of crematorium. This is particularly true over time as a new facility builds a reputation.

### 3.3.3. *The CMA’s entry analysis confirms that the CMA’s catchment areas are too narrow*

The CMA’s PDR continues to draw inferences from the entry analysis that cannot be sustained.

Although it is correct (and unsurprising) that the impact of entry on volumes is greater the closer the new entrant is to the existing site, the CMA does not contest that significant entry effects are also seen beyond its proposed 18-minute catchment. Unfortunately, the CMA’s entry analysis uses standard rather than cortege drive times and uses categories that are not aligned to the CMA’s catchment conclusions. However, the CMA’s own analysis shows that there are statistically significant and material negative effects of entry on volumes beyond a 33-minute cortege drive time. For example, in the CMA’s extension of its analysis using 5-minute rather than 10-minute drive time bands, the CMA finds a 10% negative effect on volumes when entry occurs an equivalent of 33-42 minutes away (converted to cortege driving times).<sup>100</sup>

Memoria is also disappointed that the CMA continues to rely on the flawed analysis of the pricing effects of entry, suggesting (counterintuitively) that entry results in *increased* fees. Equally, the PDR (including its Appendix M) regrettably does not appear to deal with any of Memoria’s previous comments on the problems with this analysis. Specifically, no attempt has been made to move to a less crude analysis that would also take account of *quality* responses to entry (e.g. through increasing slot times or investing in improving facilities), which would also be expected to influence price.

Further, the CMA’s analysis does not appear to have been updated to take account of the fact that we would not expect rival entry by members of the same ownership group to have an impact on price. Memoria also notes that its previous comments on the reliability of the data underlying this analysis (which clearly is *not* reliable for certain Memoria sites) do not appear to have been addressed by the

---

<sup>99</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix E, paras 35-36.

<sup>100</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix M para 53. See also Appendix M, para 26(a) for the results of the analysis using 10 minute time bands. Sensitivities to this analysis were set out in more detail in Appendix 4 to Memoria’s response to the CMA’s Working Papers of 30 January 2020 (reattached to this submission as Appendix 6).



CMA.<sup>101</sup> Given the small number of private sector crematoria experiencing entry events within 33 cortege-speed minutes (or even within 50 cortege-speed minutes), even a small number of erroneous observations could in principle have a material impact on results.

Similarly, the CMA continues to rely on a flawed analysis of the effect of entry on slot lengths and capital investments to conclude that entry had no positive effect on capital expenditures. The CMA has not shared the underlying data or analysis on these points with Memoria or its advisors, making it difficult to comment in detail. However, Memoria has already noted in previous submissions that the analysis of slot length is characterised by a relatively small sample (particularly in relation to entry events within half an hour of private crematoria).<sup>102</sup> Further, as in the analysis of fees, the CMA takes no account of other factors that might be expected to influence slot lengths and/or customer responses to different slot-length options.

The CMA's analysis of impact of entry on investment is unchanged and therefore remains extremely crude. The analysis appears to compare investment over a 5 year period (2014-2018) to entry at any point during those 5 years, and therefore it fails to take account of the fact that entry at the end of the 5 year period could hardly be expected to have an effect.<sup>103</sup> Indeed, given that most crematoria are run by local authorities, who will have a rather prolonged process to approve and finance new investment, it can hardly be expected to see investment responses on such a short time frame, even if the analysis were better specified. Unfortunately, the very broad description of the analysis (i.e., entirely devoid of any discussion of statistical significance) makes it extremely difficult to provide a meaningful commentary beyond this headline point. As such, this analysis has no probative value to support the CMA's conclusions in the PDR.<sup>104</sup>

The CMA also continues to provide an analysis of the impact of entry on incumbent volumes over time. While it remains unclear precisely what the CMA intends to infer from this analysis, it appears to imply that the fact that volume declines after entry are relatively short lived (and are followed by continued growth) somehow has negative connotations for the extent of competition between crematoria.

As Memoria already pointed out in its previous submissions,<sup>105</sup> any such inference would be factually incorrect. Meaningful competition between entrants and existing suppliers is not inconsistent with local markets reaching a new competitive equilibrium at some point after entry (in this case on average around 4 years after entry, and with volumes falling in the first 3 years). Indeed, the CMA's analysis of the time horizon of entry impact is entirely consistent with a material (and permanent) impact on volumes. Figure 1 (*below*) shows how an initial volume of 1,000 cremations would grow over time, first using the CMA's post-entry growth rates, and then assuming that the pre-entry growth rate of 2% per annum were sustained throughout. It can be seen that, although the impact of entry on the growth *rate* ends after 3 years, the impact on the *level* of cremations is permanent. In fact, at no point during the period covered by the CMA's analysis do cremation volumes for existing suppliers even recover to 90% of their levels pre-entry of the new supplier (and they remain around 20% below the levels that would have been achieved absent entry).

---

<sup>101</sup> For a full set of these comments, please see Appendix 4 to Memoria's response to the Working Papers of 30 January 2020 (reattached to this submission as Appendix 6). In relation to data reliability, Memoria notes that the largest price increase observed in the data in relation to an entry event in the 20-30 minute is an alleged 32% increase in prices of a standard cremation (a £190 increase from £600 to £790) at Denbighshire in 2018. However, in reality (i) Denbighshire did not experience rival entry in 2018 (but rather entry of another Memoria crematorium at Flintshire); and (ii) Denbighshire never priced standard cremations as low as £600, and in the year in question in fact increased prices by £49 (or 7%), from £750 to £799.

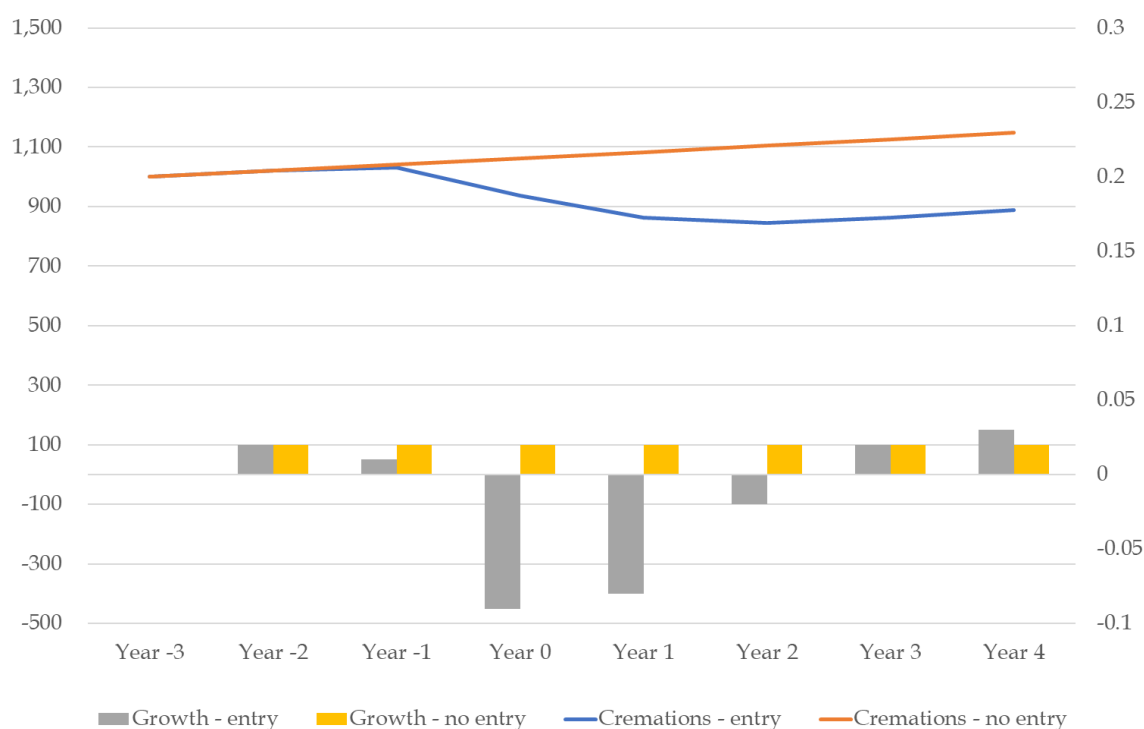
<sup>102</sup> Memoria Response to the CMA Working Papers of 30 January 2020, Appendix 4 (reattached to this submission as Appendix 6).

<sup>103</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.169-6.171.

<sup>104</sup> These CMA conclusions can be found in CMA Funerals Market Investigation, *Provisional Decision report*, para 104.

<sup>105</sup> Memoria response to The CMA's Working Papers of 30 January 2020, § 3(c)(ii) and Appendix 4 (reattached to this submission as Appendix 6).

Figure 1- Impact of entry in growth rates and absolute cremation numbers



The only inference that can be drawn from this analysis is therefore that the impact of rival entry on crematorium volumes is material and sustained.

3.3.4. The CMA’s review of qualitative evidence does not confirm a lack of responses to entry

The results of the CMA’s qualitative review are not reliable evidence in support of the narrow catchments applied in the PDR, or more generally a lack of competition between crematoria (due to the alleged customer focus on location to the exclusion of all other considerations).

In relation to Dignity’s comment that gravity models are sometimes used in planning crematorium locations, this cannot be used to infer somehow that only location matters to crematorium choice. Gravity models are used in many retail markets (for example, as the CMA will be aware from its investigation of the proposed Sainsbury’s/Asda merger, they are used in the supermarket sector). However, this does not mean that location is the *only* consideration that matters to supermarket customers, while price and quality are irrelevant. It is therefore unclear what the PDR proposes to infer from this comment in relation to crematoria.<sup>106</sup>

Similarly, Memoria’s comment that “the recognised acceptable drive-time for bereaved families (from planning appeals) is 30 minutes based on funeral cortege speeds”<sup>107</sup>, means precisely what it says – i.e., that this is the test used in planning appeals to determine the quantitative and qualitative need for a new crematorium. It does not imply that this is the farthest extent of competition between crematoria once built (either in general, or in specific areas), not does it imply that this is the longest distance that any customer would be prepared to travel. Ultimately there is a clear distinction between planning theory and commercial reality.

<sup>106</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.159.

<sup>107</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix E, paragraph 27 – which has already been clarified as set out in the footnote.

The fact that the *most severe* volume impact of new entry is in the areas closest to the entrant is also hardly surprising, and by no means specific to crematoria. As such, this observation cannot be used to draw any particular negative inferences about the efficacy of competition in the crematorium sector.<sup>108</sup>

While the CMA finds no qualitative evidence that local entry results in local price increases as a response (though some local authorities had considered that option, to try to maintain revenues), it points to more general statements about the need for prices to increase in order to support the substantial investment made in the crematoria sector in recent years.<sup>109</sup> However, the CMA does not investigate how the market would have developed had prices not increased.

As set out in detail in previous submissions,<sup>110</sup> increasing demand for cremations required the establishment of new crematoria, as did the often poor service offerings and overutilisation of crematoria observed in the past. The CMA now recognises that quality is important to consumers, but it still does not investigate what impact a price cap would have on the ability of the market to maintain and improve the quality on offer from existing sites (where they are currently lacking, which sadly remains the case in many areas).<sup>111</sup> The CMA also fails to recognise evidence, that it has clearly collected, which shows that (consistent with Memoria's behaviour) other crematoria also track rivals at a considerable distance. For example, in a different context the CMA notes that Scarborough crematorium tracks prices at East Riding (over 20 minutes drive at standard speeds to the north; therefore, just outside the CMA's catchment), and also in York (over an hour's drive *at normal speeds* to the South West; therefore, far outside the CMA's catchment, and significantly further away than Memoria's Kirkleatham).<sup>112</sup>

The CMA also gives significant effort to undermining the examples provided by Memoria where local rivals undertook competitive actions since its entry. In doing so, it is also unclear why the CMA focuses particularly on the local authority examples provided, whereas the rest of its analysis generally looks at evidence from both the private and public sector.<sup>113</sup> As discussed in detail in § 3.1 (*above*), these assertions represent a skewed view of the evidence summarised from local authorities, which generally confirms Memoria's view that generally these crematoria *have* improved standards or made other quality or price improvements since Memoria entered (in several cases in direct response to that entry).

As such, the qualitative evidence does nothing to support the CMA's conclusions that competition in the crematorium market is weak, or confined to narrow catchment areas.

- Interpretation: the need to earn a return on large capital investments

As noted in previous Memoria responses, the cremation market is fundamentally different to a standard retail market. This is due to the significant minimum efficient scale of a crematorium relative to the typical size of local population centres.

A typical crematorium in the UK will undertake between 1,400 and 1,800 cremations per annum.<sup>114</sup> Given that the UK death rate is currently around 1%, and cremation rates around 78%, this implies that a typical crematorium will have to serve a local population of around 180,000-210,000 people.<sup>115</sup> Planning appeals often refer to a local population of 150,000 as a basis for establishing quantitative

---

<sup>108</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.160.

<sup>109</sup> In relation to the quantitative finding (in Memoria's view likely unreliable) that entry results in price increases, the PDR points to several statements suggesting that prices need to increase in the face of entry to cover costs as volumes fall. Though in reality it finds no practical examples of this. See paragraphs 6.166-6.167.

<sup>110</sup> Memoria Response to the CMA Working Papers of 30 January 2020, Appendix 1 (reattached to this submission as Appendix 3).

<sup>111</sup> CMA Funerals Market Investigation, *Provisional Decision report*, paras 6.166-6.168.

<sup>112</sup> *ibid*, Table 30.

<sup>113</sup> *ibid*, paras 6.175-6.179.

<sup>114</sup> CMA Funerals Market Investigation, *Crematoria: background and market structure*, Figure 3.

<sup>115</sup> E.g., a population of 180,000 with a death rate of just under 1% per annum (1,763), and a cremation rate of 78%, would generate a need for around 1,379 cremations per annum.

need.<sup>116</sup> One hundred and fifty thousand people is around the size of a population centre like Gloucester, Telford, Ipswich, Slough and Cambridge, while 200,000 is around the size of a population centre like Bournemouth, Norwich, Swindon, Swansea, Milton Keynes or Southend on Sea.<sup>117</sup> In order to justify the presence of two crematoria locally, a population centre (and its hinterland) would need to have a population roughly double that size. Two such examples are:

- Cardiff (with a population of around 350,000), where Memoria competes with a very popular rival crematorium located in the city, as well as others located near smaller population centres nearby (Newport and Bridgend); and
- Leicester (with a population a little over 400,000), where Memoria competes with one rival located in Leicester and others addressing both Leicester and other surrounding population centres and rural areas relatively nearby.

Crematoria will naturally try to locate in areas that are currently under-served. This is due to both the need to find sufficient demand to offer a return on capital investments, and the nature of needs assessments and the local planning process, which makes it difficult to locate new crematoria close to existing sites in population centres (even if they offer a poor standard of service).

This means that crematoria naturally tend not to locate right next door to each other. Therefore, customers are faced with a trade-off between location, quality and price when they select which crematorium to use. While this means that some customers may consider locational advantages as the decisive factor in their choice of crematoria, there will also be many others for whom location is just one factor to be considered, alongside quality and price. However, crematoria cannot set a different price or different quality of service for customers that have a strong preference for their services due to location (“**Inframarginal Customers**”) and those who could readily switch to an alternative (“**Marginal Customers**”). In order to understand how competition is working, the CMA cannot focus on the mere existence of Inframarginal Customers but, instead, it needs to interrogate the extent to which crematorium pricing and quality decisions are constrained by the willingness of Marginal Customers to switch.

Therefore, Memoria rejects the CMA’s assertion that sites with only a few (if any) rival crematoria within their catchment do not face meaningful competition.<sup>118</sup> In general, even those sites without very closely co-located rivals will still face competition from more distant rivals, with significant centres of population choosing between alternative crematoria that are each a similar drive away (e.g. one at 15 minutes and one at 25 minutes), where drive times will not be the main decision driver. Some of these areas can be seen in the slide pack re-provided as Appendix 7 to this submission.<sup>119</sup> For example:

- Cardiff and Glamorgan (CGM) will be a similar drive time away as Thornhill Crematorium for many families in Cardiff; and to Coychurch for residents of towns between Bridgend and Cardiff.<sup>120</sup>

---

<sup>116</sup> See, e.g., [https://digital.flintshire.gov.uk/FCC\\_Planning/Home/NewDocView/64005](https://digital.flintshire.gov.uk/FCC_Planning/Home/NewDocView/64005), which notes that “local authorities with a population in excess of 150,000 can expect to erect and control a crematorium, operating on a sound financial basis after loan repayments”.

<sup>117</sup> Based on 2016 data provided by the ONS:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/adhocs/008264mi/yearpopulationestimatesformajortownsandcities2016>

<sup>118</sup> CMA Funerals Market Investigation, *Crematoria: background and market structure*, Figure 7 and Table 2.

<sup>119</sup> Populated areas on the fringe of Memoria’s “core” areas can also be seen from the maps contained in the Needs Assessments submitted in response to Schedule 2, Annex A, Question 7 of the CMA’s RFI of 8 May 2019, which requested all documents submitted to the planning authorities.

<sup>120</sup> See Appendix 5 to Memoria’s response to the CMA’s Working Papers of 30 January 2020 (resubmitted as Appendix 7 to this response).

- Kirkleatham (KMC) will be a similar drive time away as Stranton Grange Crematorium or Teeside Crematorium for many residents in Middlesborough, and to Scarborough for families in and around Whitby.<sup>121</sup>
- Amber Valley (AVM) will be a similar drive time as Markeaton for families in Ripley or Belper; to Bramcote for families in Heanor, Langley Mill and Eastwood, to Mansfield for families in Sutton-in-Ashfield and South Normanton, and Chesterfield for families in numerous villages off the A61 south of Chesterfield, as well as those living in and towards Matlock to the West.<sup>122</sup>
- South Oxfordshire (SOCM) will be a similar drive time away as Oxford Crematorium for families in southern and western Oxford, to Reading Crematorium for families in towns like Wallingford, to Swindon Crematorium in towns like Farringdon, Carterton and Witney.<sup>123</sup>
- South Leicester (SLM) will be a similar drive time away as Leicester Crematorium for families in southern Leicester; to Kettering Crematorium for families in Market Harborough; and to Nuneaton Crematorium for families in Hinckley (which will soon have its own crematorium, providing another alternative).<sup>124</sup>
- Waveney (WMC) will be a similar drive time away as Great Yarmouth Crematorium for families in southern Great Yarmouth and Gorleston; and to Ipswich for many families along the Suffolk Coast.<sup>125</sup>

The CMA mentions these examples, but does not take any account of them.<sup>126</sup> The reasoning is unclear, although the following paragraphs in the PDR discuss the fact that Memoria (and others) do not offer discounts to out of area customers or funeral directors or other specific actions taken to encourage out of area demand.<sup>127</sup> This is in fact incorrect: Memoria spends considerable time and resources on trying to attract demand from out of area funeral directors. Moreover, the fact that Memoria does not price discriminate (or discriminate in other ways) between different customer groups clearly cannot be taken as evidence of a lack of competition. Rather, Memoria will set its prices and quality offerings by considering the likely impact on the behaviour of its Marginal Customers,<sup>128</sup> and which rivals those Marginal Customers would switch to. This means that Inframarginal Customers (who are less likely to switch) are protected by the competition Memoria faces for its Marginal Customers. The lack of price discrimination against core customers is a positive rather than negative feature of the crematorium market.

Memoria notes that this recognition of broader competition has been made in previous market investigations. In the Private Healthcare Investigation (2014), for instance, the CMA made reference to its guidelines that “the [CMA] may consider information on catchment areas from which the bulk of a hospital’s patients are drawn and which hospitals customers (i.e. patients and private medical insurers) consider to be substitutes for each other”<sup>129</sup>. It went on to note that catchment area analysis “has a number of limitations”, and in particular that “geographic markets defined on the basis of catchment areas” may be “too narrow in some instances” and therefore that “we have considered in our local competitive assessment the constraints on each hospital, whether arising within or outside the hospital’s catchment area”.<sup>130</sup> The study concluded that:

---

<sup>121</sup> *ibid*, slide 10.

<sup>122</sup> *ibid*, slide 19.

<sup>123</sup> *ibid*, slides 28 and 34, which notes that the introduction of a new longer 40-minute slot at Swindon indeed had an impact on Memoria bookings from Farringdon and Carterton.

<sup>124</sup> *ibid*, slide 36.

<sup>125</sup> *ibid*, slide 46.

<sup>126</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 6.101.

<sup>127</sup> *ibid*, paras 6.102 - 6.104.

<sup>128</sup> See § 3.1.2 of this response for further discussion of the viability of crematoria at different volumes.

<sup>129</sup> CMA Private Healthcare Market Investigation, *Final Report*, para 5.58; CC, *Guidelines for market investigations: Their role, procedures, assessment and remedies* (CC3 Revised), para 148.

<sup>130</sup> CMA, Private Healthcare Market Investigation, *Final Report*, para 5.64.

“In particular, we have looked at any overlap with other private hospitals’ catchment areas, including hospitals inside and outside the hospital’s catchment area, to identify, for each hospital, the set of private hospitals/PPUs which the assessment of competitive constraints should focus on.”<sup>131</sup>

In Memoria’s view a similarly realistic view needs to be taken in relation to crematoria.

#### 4. Profitability and the alleged provisional AEC

The CMA relies largely on an analysis of profitability to support its finding of an AEC. Yet, this analysis continues to show that [REDACTED] ([REDACTED] Firm D and many local authority crematoria) are clearly not making excess profits.<sup>132</sup> Further, the CMA’s assertion that Memoria can be expected to make higher profits in the future is not justified. In particular, the CMA has not responded to any of the analysis submitted by Memoria in response to Working Papers to show why this is not the case. The weaknesses in the PDR’s assessment of profitability (both for Memoria and for the broader industry) are discussed in § 4.1 (*below*).

The CMA also bases its assertion of material detriment in the crematorium sector on the observation that prices would be lower if they had simply increased with inflation over time since 2008. However, the choice of 2008 as a base year appears entirely arbitrary and, in any case, it completely ignores other changes that have taken place in the market since 2008. In particular, substantial investments in new crematoria, as well as improvements in facilities and quality of service offered by existing crematoria. This is set out in § 4.2 (*below*).

##### 4.1. The CMA’s profitability analysis remains deeply flawed

The significant problems with the CMA’s profitability analysis are discussed in detail in Appendix 2 to this submission and in Memoria’s previous submissions on profitability (reattached to this submission as Appendix 8). Unfortunately the CMA does not appear to have taken account of any of Memoria’s key comments on the profitability Working Papers, and therefore the CMA’s profitability analysis remains flawed in the PDR.

Nonetheless, the fundamental point to recognise is that the analysis in the PDR continues to show that [REDACTED]. That is, under current market conditions [REDACTED].

Moreover, despite continued assertions to the contrary, there is no reason to expect this situation to change fundamentally in the future. Specifically:

- (i) [REDACTED]:
  - Most of Memoria’s sites are already well established [REDACTED]. There is no clear relationship between age of site and utilisation or profitability for sites that are more than a couple of years old.
  - When plausible increases in utilisation at Memoria’s newer Flintshire site are taken into account, [REDACTED]. Moreover Memoria’s newest site (Barnby Moor) faces very close competition from another newly established rival [REDACTED].
  - When inevitable future increases in cremator maintenance costs are taken into account, [REDACTED].

---

<sup>131</sup> *ibid*, para 5.68.

<sup>132</sup> Due to redactions, Memoria can only include that this is the case for firms shown in the “0-10%” bracket for ROCE: but it is also likely to be the case for many firms in the “10-20%” bracket or higher: particularly given problems in the CMA’s approach to land valuation.

- (ii) The CMA's assessment of Memoria's [REDACTED]. The CMA continues to use [REDACTED] as evidence that Crematoria may be able to sustain higher gearing than funeral directors (and therefore may face a lower cost of capital). [REDACTED].

In relation to the CMA's broader assessment of the profitability of Memoria's rivals, redactions make it difficult for Memoria to comment in detail. However, clearly the lack of expert input into the land valuation exercise remains problematic. Fundamentally, the CMA's application of crude "one size fits all" assumptions to land values and depreciation schedules means that its analysis is incapable of providing insights into *which* sites (of which type) are actually generating excess profits, and *why*. This is highly problematic, as it risks the imposition of remedies, which will actually make it more difficult for the crematorium sector to meet consumer needs, rather than facilitating. Further discussion of these points in relation to the CMA's broader analysis of profitability are also set out in Appendix 2 to this submission.

#### 4.2. The CMA's assessment of detriment

The CMA's assessment of detriment is essentially based on its profitability analysis: arguing that economic profits account for £175 per local authority cremation and £215 per private sector cremation over the period.

As set out above, it is important to note that many crematorium providers ([REDACTED], Firm D, and a number of local authority crematoria) do not demonstrate excessive profits even under the CMA's flawed analysis. Therefore, it is critical for the CMA's final analysis of detriment to identify *which* crematoria are driving any detriment, and the reasons why those specific crematoria are able to earn excess profits. Without such an analysis, the CMA will simply not be able to design suitable remedies to limit the size of any detriment, without bringing material adverse consequences for consumers.

In Memoria's view, it is likely that many of the crematoria driving the finding of economic profits are *not* particularly high priced in absolute terms, but rather charge prices that are high *relative to the very low costs ascribed to those sites under the CMA's methodology*. Sites with high volumes (due to, e.g., local planning restrictions preventing nearby entry), older buildings (therefore highly depreciated), and old sites (where the land is therefore valued based on the CMA's "one size fits all" methodology) may well appear to be highly profitable even at modest prices. In order to check this logic for itself, the CMA should present an analysis of the distribution of prices charged by crematoria that it finds to be making excess profits, compared to those where no excess profits are found.

Before imposing any remedy focused on *price*, the CMA must establish that such a remedy would actually be effective in resolving the concern that it has identified. In Memoria's view it is highly unlikely that this would be the case as the remedy is not strongly related to the nature of the concern identified. As the CMA's own analysis in the PDR makes clear, any reduction in prices from current levels would mean that many high quality rural sites in both the private and public sector would simply become unviable. In fact, they would become unable to cover the considerable cost of the capital tied up in the site based on the limited demand they are able to compete for at those locations. This will certainly hamper the ability of the sector to meet increasing demand in the future, whether through developing new sites or investing in the improvement of existing (but ageing) facilities. Indeed, if profitability is sufficiently compromised, it could even result in existing sites becoming unviable. The PDR does not discuss what provisions the CMA would propose to put in place to avoid such a scenario, given the serious negative consequences it would have for bereaved families.

The CMA also suggests that detriment can be calculated on the basis of the increase in average crematorium prices since 2008 (beyond inflation). This further suggests that, if price increases had only taken place in line with inflation average crematorium, prices would have been over £200 lower than they are (at £543-569, rather than £775).<sup>133</sup>

---

<sup>133</sup> CMA Funerals Market Investigation, *Provisional Decision* report, para 8.40.

However, this comparison entirely ignores the fact that the crematorium sector in 2008 was overutilised and underinvested. In turn, the CMA effectively implies that the many investments in new and existing sites during the 2010s were worthless and added no value to the sector (and therefore should not be rewarded through any return on capital at all). Nowhere does the CMA set out the logic for such an extreme implied assumption and, as such, a simple comparison of 2008 prices (in real terms) to those seen today cannot be considered viable evidence of detriment. The importance of new investment in the sector over the past 20 years (and particularly the last decade that Memoria has been building Crematoria) has been set out in detail in a previous Memoria submission.<sup>134</sup>

Taking account of the evidence presented above, it is paramount that current investment in improving and maintaining the existing fleet of crematoria is not stifled by rigid and excessive regulation. Any remedies imposed by the CMA should instead foster such investment.

Memoria strongly believes that only by encouraging and securing the investment needed to innovate and improve current crematoria, in addition to building new sites, can the supply of cremation services meet future demand.

## 5. Remedies

### 5.1. The CMA's price regulation proposal

In this section, Memoria addresses the tensions created by the CMA's proposed price regulation remedy, which the CMA suggests should be implemented following the completion of a "supplementary MIR". Memoria stresses that, in so doing, it does not accept the alleged provisional AEC, nor the necessity and propriety of a "supplementary MIR". In any event, Memoria also does not believe that the price remedies that the CMA has proposed can be an effective remedy for the alleged provisional AEC, as they do not address its underlying features and alleged causes.

In PDR Appendix W - *Remedies* (the "**Remedies Appendix**") the CMA has set out its intention to propose price regulation on a "benchmark" package including a defined list of cremation products and services, which crematoria would have to actively market, promote, and make available for sale to customers at any price up to the maximum cap level (the "**Benchmark Product**").<sup>135</sup>

The CMA's design would see the Benchmark Product's maximum price to be initially determined using sector pricing data to be adjusted with reference to inflation, cost base, and profitability data.<sup>136</sup> The cap would be adjusted during the enforcement period, but the CMA has not yet concluded whether it should be set for the UK as a whole, for each devolved nation, or regionally.<sup>137</sup> Finally, the CMA is minded for the Benchmark Product to apply to all crematoria in the UK; however, it left the possibility that it apply only to private crematoria open (pending "further engagement").<sup>138</sup>

In Memoria's view the CMA's proposed intervention would be highly distortionary, and would perversely act to damage rather than benefit consumers. In fact, it would restrict choice and, assuming the price cap was binding on suppliers such as Memoria, it would restrict investment and available crematorium capacity. Indeed, the mere threat of such regulation hanging over the industry until such time as a "supplementary" MIR is launched will, in itself, clearly start to damage investment incentives and have a negative impact on consumer welfare.

---

<sup>134</sup> Memoria response to The CMA's Working Papers of 30 January 2020, Appendix 1 (reattached to this submission as Appendix 3).

<sup>135</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, paras 94(a), and 101(a) and (c).

<sup>136</sup> *ibid*, Appendix W, para 101(d)(i).

<sup>137</sup> *ibid*, Appendix W, para 101(d)(ii) and (iii).

<sup>138</sup> *ibid*, Appendix W, para 101(b).



Memoria's concerns in this regard are set out in more detail below. Specifically:

- (i) how a crude price cap would distort the market and damage consumer welfare;
- (ii) how such a price cap would damage Memoria's ability to expand, invest, and even to operate existing sites;
- (iii) that the CMA's confidence in being able to resolve complex issues of Benchmark Product design are misplaced; and,
- (iv) that the proposed regulator structure itself would bring substantial costs, which the CMA have estimated and would inevitably be passed on to consumers.

Finally Memoria discusses the PDR's rejection of alternative remedy proposals and, particularly, proposals to address planning barriers that limit competition for certain congested and underinvested sites where a competitive market would provide consumers with additional capacity and choice, but planning controls currently prevent this. In Memoria's view this rejection is unjustified.

#### *5.1.1. A crude price cap would distort the market and damage consumer welfare*

The CMA appears to have ruled out applying a cost-based regulation in favour of a simplified approach that would apply a blanket price-cap across all crematoria.<sup>139</sup> The CMA sets out no reasoning for adopting this approach in the PDR, and in Memoria's view it cannot be justified. The cost-based regulatory approach set out in the Working Papers that the CMA drops from consideration in the PDR, while unduly costly and disproportionate to the true scale of any concerns in the crematorium market, at least has the benefit of being capable of reflecting (among other factors) the varying land costs and investments made by different crematoria. Instead, in the PDR, the CMA continues to propose a regulatory approach that, while doubtlessly cheaper to operate due to the much cruder nature of the regulatory mechanism, risks substantially greater harm being done to consumers who would lose the option to choose (as many do today) a high quality cremation at uncongested facilities maintained to an excellent standard.

[REDACTED], a price-cap based on pricing data that is binding on Memoria will undermine its business model, [REDACTED].<sup>140</sup>

Memoria does not believe that the CMA can credibly design such a price cap to allow operators to achieve a profit margin which efficiently incentivises investments where they are needed (and valued by consumers), because it will not recognise variations in quality (driving substantial differences in capital employed and operating costs). Memoria has already provided evidence to the CMA [REDACTED].<sup>141</sup> Indeed, in the Remedies Appendix, the CMA has acknowledged that other parties to this Funeral Market Investigation expressed a similar view.<sup>142</sup> However, the CMA has not responded to these concerns.

Looking at the broader cremation industry, this type of regulation would have a chilling effect on investment for any new site, as the price cap would limit the likelihood of a viable return on investment given the high level of capex required to be sunk in land, buildings and equipment. In its Working Papers, the CMA itself has identified how a price-data-based cap could impact disproportionately on higher cost areas and discourage future market entry there – those are the areas that arguably are most in need of entry.<sup>143</sup> In Memoria's view, such a remedy would also limit the incentives to build new capacity in areas that are currently underserved, as a greater level of local population will be required

---

<sup>139</sup> Memoria notes that the CMA is considering the price cap be devolved nationally or regionally, but does not provide any detail on how this would work in practice.

<sup>140</sup> Memoria's response to the CMA's Working Papers of 20 Feb 2020, Appendix 1 (and its Confidential Annex) - reattached to this submission as Appendices 8 and 8.1 respectively.

<sup>141</sup> See Memoria's response to the CMA's RFI of May 2019, Schedule 1, Annex B, Questions 8 and 10 (and their Appendices); and Memoria's response to the CMA's Working Papers of 20 Feb 2020, Appendix 1 - reattached to this submission as Appendix 8.

<sup>142</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 104.

<sup>143</sup> CMA Funerals Market Investigation, *Remedy options for regulating the price of crematoria services*, paras 65-66.

in order to ensure that costs can be covered even at the capped price. As the Remedies Appendix has failed to provide any justification or mitigation for taking such risks, the CMA should be mindful of it when devising a remedy for the alleged provisional AEC.

Additionally, a price cap would also deter any investment in existing sites by crematoria operators because such investment could not be rewarded through price increases. Therefore, returns could only be achieved through the generation of higher volumes. This would inevitably push operators to engage in a “race to the bottom” on quality by ceasing to improve existing sites and increasing the number of cremations per crematorium. In its Working Papers, the CMA itself has identified how a price-data-based cap could result in reduced incentives for operators to compete on quality and invest in refurbishments.<sup>144</sup> The CMA should again be aware of this risk when devising any remedy for the alleged provisional AEC. If products are assumed to be “homogeneous” in setting a regulatory cap, the market will inevitably “level down” until that is indeed the case. This would restrict customer choice and destroy consumer welfare for those customers who today choose to travel to a site that offers them a higher quality or specific service offering that they value.

Memoria has already explained to the CMA how artificially distorted prices, such as those that could result from its currently-proposed remedy, would send the sector back to the vicious cycle of underinvestment and low quality of the 1970s-1990s.<sup>145</sup> Memoria has also already explained to the CMA how forecasts for the UK death and cremation rates suggest the need for expanding existing crematoria and building new ones, if supply is to meet future demand.<sup>146</sup> The proposed remedy would stifle investment in new sites, and expansion of existing ones, which would lead to an increased gap between demand and supply in the future.

In light of these considerations, it is evident that the CMA has erred in disregarding the risk of both lack of supply to meet demand, lack of choice of different cremation options and, in particular, a lack of high quality options as a consequence of its proposed remedy. As explained above, this is caused by the fact that the CMA has erred in relying on its characterisation of the crematoria sector as providing a homogenous product, which is factually incorrect. In § 3 of this response (*above*) and in previous submissions (including Memoria’s response to the CMA’s Working Papers), Memoria has provided overwhelming evidence that the cremation market consists of varied and diverse product offerings with different levels of quality, meeting the varied and diverse needs of customers. The CMA has disregarded this evidence. Furthermore, Memoria’s evidence shows that, while such diversity has already benefitted consumers, more (not less) innovation and quality diversification is needed across all crematoria in the market to avoid consumers being faced with a “postcode lottery” of quality in the future as demand continues to increase.

Therefore, Memoria urges the CMA to reconsider its erroneous assessment and analysis and, if required, design a remedy for the alleged provisional AEC that would really foster increased competition, entry, quality, differentiation and innovation.

It is clear from the fundamental economics of running a crematorium that, as the rate of utilisation of crematoria rises, local authorities that face little or no competition (due to planning restrictions) and rely on run down (largely written-off) assets are able to go beyond simple cost recovery and achieve high profits. This is likely to be the cause of the bulk of the alleged provisional AEC of high prices that the CMA has found and, as such, it is largely the consequence of certain crematoria (protected by planning permission) **having no incentives to invest in improving their offer and capacity**, as they can operate profitably without making such investments on the basis of high utilisation levels, and without the realistic threat of entry. There is no reason to believe that crematoria driving the provisional AEC alleged in the PDR through this mechanism in fact charge particularly high prices,

---

<sup>144</sup> *ibid*, para 83(a).

<sup>145</sup> Memoria’s response to the CMA’s Working Papers of 30 Jan 2020, para 5, and Appendix 1 para 1 (reattached to this submission as Appendix 3).

<sup>146</sup> Memoria’s response to the CMA’s Working Papers of 20 Feb 2020, Appendix 1 para 1(a) - reattached to this submission as Appendix 8.

and the CMA has provided no evidence to indicate that this is the case. The CMA urgently needs to address this error of assessment and provide analysis and evidence on the underlying *causes* of the alleged provisional AEC.

Unless there is a clear alignment of crematoria driving the alleged provisional AEC, and crematoria charging relatively higher prices (which, based on its own experience and profitability, Memoria does not believe is the case), then imposing a price cap would not mitigate the alleged provisional AEC as it neither address its root causes nor prevents the continued enjoyment of high profits by sites with high volumes and/or a low capital base. As such, a crude price cap would be ineffective at mitigating the detriment to competition, as those excessively profitable local authority crematoria would still be able to price below the cap, while continuing to contribute to the alleged provisional AEC in breach of their cost-recovery obligation.

#### 5.1.2. *The remedy should not apply to Memoria* [REDACTED]

As set out in § 4 of this response (*above*), the CMA has not found any evidence of [REDACTED] other concerns of adverse effects [REDACTED].<sup>147</sup> Further, it is clear that the price and quality of Memoria's services are designed in response to rivals' competitive pressure, and that Memoria's presence in the market also drives rivals to make their own improvements and competitive responses.<sup>148</sup>

This reflects the fact that Memoria provides a high-quality service at competitive prices leading to significant consumer benefits in areas that were previously poorly served. [REDACTED] is incompatible with the CMA's assertion that crematoria profits are not constrained by competition. In fact, had Memoria's profits not been responding to competitive constraints, [REDACTED]. The CMA's conclusion that competition does not constrain crematoria profits is therefore factually erroneous [REDACTED] "Firm D"; and several local authority crematoria.<sup>149</sup> The CMA does not address this contradiction in the PDR, nor does it address why competition appears to constrain some crematoria providers more than others.

Indeed, if a price cap were to be applied to these sites that are only just (or not) covering their costs today, their viability would be threatened. Certainly, incentives to invest in new or improved sites would be destroyed, while the very viability of existing sites could also be undermined.

To illustrate this point, consider Memoria's profitability if a price cap were applied to its sites at any of the levels implied by the CMA's detriment calculations. Table 6 (*below*) summarises Memoria's overall ROCE under the CMA's current base case calculations, and also:

- Assuming that Memoria's prices were capped at its 2018 average standard cremation fee of £814 (i.e. even if Memoria's average price were seen as acceptable, but reflecting the lack of acknowledgement in the PDR that different sites have different costs and need to charge different prices);
- Assuming that Memoria's prices were capped at its 2018 average less the £215 excess that the PDR claims to identify – i.e. at £599;
- Assuming that Memoria's prices were capped at £569 (the top end of the PDR's range based on inflationary increases of average prices for standard cremations from 2008);
- Assuming that Memoria's prices were capped at £543 (the lower end of the PDR's range based on inflationary increases from 2008).

In each case the results are presented using both a 100 year economic life of buildings (as the CMA assumes) and a 50 year economic life (as Memoria assumes in the normal course of business).

---

<sup>147</sup> See § 4.1 of this response.

<sup>148</sup> See § 3.1.2 of this response.

<sup>149</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix U, paras 155-157; [REDACTED].

Table 6 – Sensitivities of the CMA’s profitability analysis to alternative price caps (based on 2018)

	100 year UEL	Profitable sites (>8%)	50 year UEL	Profitable sites (>8%)
2018 actual prices	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capped at 2018 Memoria average standard fee	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capped at 2018 Memoria less £215	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capped at £569	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capped at £543	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CRA sensitivities to Profitability calculations underlying the PDR, provided as “Memoria Profitability PDR CONFIDENTIAL 200825\_CRA sensitivities.xlsx”

It can be seen that even under the most favourable of these assumptions to its profits, Memoria would barely make a return, and certainly not one sufficient to cover its cost of capital (even at the CMA’s proposed threshold of 8%). Moreover its sites individually would in many cases become loss making (and would all be unable to cover their own cost of capital if the cap were placed materially below Memoria’s current average standard cremation fees).

Memoria would therefore find itself [REDACTED]. As set out in detail in previous submissions and in § 4.1 of this response (*above*), there is no reason [REDACTED] as its new sites become more established. This, even if it were not to open any new sites in the future (which should not be a desirable scenario in any case, given the expected increase in demand for cremations in future years).

[REDACTED] the provisional AEC that the CMA is alleging for the cremation market. As such, it would be entirely ineffective, disproportionate (thus unreasonable), and inappropriate to impose a price-regulation remedy on Memoria which is aimed at mitigating a detriment to competition [REDACTED]. To the contrary, by investing to provide an alternative choice in areas that were previously underserved, Memoria provides important customer benefits and will continue to do so in the future, subject to regulatory constraints.

More generally, however, the specific case of Memoria simply highlights the fundamental weaknesses in the CMA’s assessment of the alleged provisional AEC. The CMA’s profitability analysis makes clear that (leaving aside flaws in the methodology, and questions over whether the alleged provisional AEC is in fact also overstated in aggregate), the alleged provisional AEC is not uniform across the market. Neither is it driven primarily by high priced offers, given that Memoria’s prices are relatively high; yet, [REDACTED].

Indeed, simple “back of the envelope” calculations demonstrate that the CMA’s proposed consumer detriment (of around £200 per cremation across 480,000 cremations carried out in the UK in 2018; or around £96m) cannot all be generated by high priced crematoria. As a starting point, [REDACTED] its average price for standard cremations cannot be excessively high given the quality offered and locations used. Based on the data underlying the CMA’s entry analysis,<sup>150</sup> Memoria’s average standard fee per cremation in 2018 was £838. There were 90 crematoria (including some Memoria crematoria) with prices above this level in 2018. If the CMA’s alleged detriment were focused on these 90 crematoria (which carried out around 135,000 cremations), then that would imply that these crematoria were overcharging by £713 per cremation.<sup>151</sup> By comparison, these crematoria were on average charging £932, suggesting that the “competitive” price for cremations at these sites would actually be

<sup>150</sup> Notwithstanding that Memoria has concerns over the accuracy of certain data points – as set out in its comments on the CMA’s entry analysis.

<sup>151</sup> Calculated by distributing the £96m of alleged detriment across the 135,000 cremations carried out by these 90 high priced crematoria.

£219. Clearly this cannot be correct. Therefore, neither can it be the case that the CMA's calculation of detriment is solely focused on these high priced crematoria.

Rather, as set out above, the alleged provisional AEC is likely to be largely driven by high volumes at underinvested sites (e.g. in city centres or greenbelt areas, protected by planning barriers). This would be often at prices that may not be constrained in any way by the proposed cap, unless it is set at a level that drives large amounts of crematorium capacity out of the market.

Obviously this is only a back of the envelope calculation (reflecting Memoria's lack of access to the full dataset underlying the CMA's calculation): but it illustrates the risks that the CMA runs by designing a remedy which clearly does not directly address the main driver of the AEC. It is critical that the CMA uses the full dataset to establish which crematoria and which types of crematoria are generating the AEC, and the extent to which a price-cap would resolve these concerns – and to set this against an assessment of the damage that would be done by driving other crematoria (currently only marginally profitable even at relatively high prices) out of the market, and damaging incentives for new investment.

#### *5.1.3. The difficulties of identifying an appropriate Benchmark Product are understated*

The Remedies Appendix does not specify which elements the CMA believes should be included in the Benchmark Product.<sup>152</sup> Unlike the CMA's original position expressed in the Working Papers, in the Remedies Appendix the CMA has not confirmed whether crematoria would still be allowed to offer other products, or whether any add-on or removal of services from the Benchmark Product would cause it to fall outside price regulation.<sup>153</sup> As such, it is unclear whether the CMA wishes the market to have competition outside of the Benchmark Product or to be entirely based on a regulated offering. Further, the PDR does not provide any indication of the principles that the CMA would use to design the Benchmark Product, or to set the price at which it should be offered. Rather, the Remedies Appendix refers to the CMA's confidence that such issues "can be addressed through further analysis, consultation and detailed specification of the price control regulation".<sup>154</sup>

In Memoria's view this confidence is entirely unfounded. The design of the Benchmark Product and the level at which prices are capped are intrinsically difficult questions and there will be no easy answers. Moreover, any "one size fits all" intervention of this type will inevitably result (even on the basis of the CMA's own profitability analysis) in some crematoria continuing to make excessive profits (where those profits are driven by high volumes, or by the use of old and highly depreciated assets), while others (with the higher capital investments and operating costs associated with a higher quality service offering, and/or located in more rural areas where the maximum possible extent of demand is more limited) will simply become unviable.

If the price cap is set relatively high, then these adverse unintended consequences will be moderated, but the impact of the cap on industry profitability will also be limited. By contrast, if the price cap is set relatively low, then these adverse consequences will be very serious indeed, returning the market to a situation of undersupply, congestion and poor quality facilities from which the significant investment of the last 20 years has (largely) recovered it.

Further, designing of the Benchmark Product is not a straightforward endeavour, as has been set out in Memoria's previous submissions.<sup>155</sup> If the Benchmark Product is very basic, then it is unlikely to have a high take-up. However, a more comprehensive product offered at a low price risks extinguishing choice from the market. Moreover, by forcing a capped price for the Benchmark Product, the CMA will inevitably push the cremation sector away from product differentiation and diversification. This fundamentally goes against the direction in which the cremation sector has been

---

<sup>152</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 102.

<sup>153</sup> CMA, *Remedy options for regulating the price of crematoria services*, paras 53-60.

<sup>154</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 107.

<sup>155</sup> Memoria's response to the CMA's Working Papers of 20 Feb 2020, § 4.

traveling over the past 3-5 years, driven by consumer preference. The CMA's confidence that these issues can be resolved through consultation and analysis is therefore entirely misplaced.

Additionally, Memoria is deeply concerned by the fact that the CMA is openly considering that the Benchmark Product not apply to local authority crematoria.<sup>156</sup> While Memoria understands the inherent difficulties of reconciling a price cap with local authorities' cost-recovery obligation (indeed, Memoria has previously submitted that it considers the two to be incompatible),<sup>157</sup> it is not at all credible that the CMA should deem a price cap applicable to private crematoria only as an effective remedy at mitigating the provisional AEC, which is alleged to be caused by both private **and** public operators. The CMA's own profitability analysis shows that local authorities are already breaking their cost-recovery obligation.<sup>158</sup> Therefore, a Benchmark Product applicable to private operators only would be an ineffective remedy, it would also be disproportionate, and destructive of relevant consumer benefits.

Finally, the Remedies Appendix states that the CMA's current thinking sees price regulation applying at least to all private crematoria operators, regardless of whether such firms are contributing to the alleged provisional AEC [REDACTED].<sup>159</sup> Memoria finds this position very concerning, and the resulting remedy both erroneous and unreasonable. The CMA's own profitability analysis has shown that [REDACTED].<sup>160</sup> Additionally, Memoria has submitted evidence in § 4.1 of this response (*above*) showing that [REDACTED]. On the facts, there is no basis for the CMA's assertion that the price regulation should apply to all private crematoria operators.

*5.1.4. The CMA's proposed price regulation will have a substantial cost for the industry*

The CMA's current remedy proposals to mitigate the alleged provisional AEC envisages a two-step approach consisting of:

- (a) an interim pricing-data-based regulated maximum price for the Benchmark Product, imposed immediately and administered by the CMA; and
- (b) a recommendation to government for the creation of a permanent independent regulator of funeral directors and crematoria, which would take over price regulation of the Benchmark Product from the CMA.<sup>161</sup>

As noted above, the CMA seems to have abandoned its Working Paper position that the price regulator in (b) potentially change the price cap basis from price data to cost data. As also set out above, in Memoria's view this represents abandoning an inefficient and costly regulatory "solution" to one that is actually likely to do more harm than good. It is possible that the CMA has done this in order to reduce the costs of regulation (although unfortunately the CMA sets out no logic for the change in position in the PDR).

However, in Memoria's view, a crude price-cap will either do major damage to customer welfare and/or will be ineffective. Moreover, the costs of regulation in relation to a price cap regulator would still be material. Such a regulator would still need to gather data across large numbers of crematorium operators on capital investments, costs and revenues, and to synthesise that data in a meaningful manner in order to adjudicate by how much the price cap should increase or fall in each year. This will still be a costly process if it is to be done properly, and the costs of this exercise are still likely to fall on crematorium customers.

---

<sup>156</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 101(b).

<sup>157</sup> Memoria's response to the CMA Working Papers of 20 Feb 2020, § 4(b)(i) page 11.

<sup>158</sup> CMA, *Remedy options for regulating the price of crematoria services*, para 66.

<sup>159</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 101(b).

<sup>160</sup> See § 4.1 of this response.

<sup>161</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 111.

Before proposing that such a regulator should be set up, the CMA would need to estimate the operating costs of the regulator, the costs that would be imposed on crematorium operators as a result, and the extent to which these costs would be passed on to customers (all of which it has failed to do). Equally, the CMA would need to estimate how this might affect the prices paid by families for cremation services. Memoria fears that these costs would inevitably be passed on to families and (if operators are forced to absorb them into profits) will undermine the viability of an even greater number of high quality offers and/or those in relatively rural areas.

#### 5.1.5. *Alternative remedy proposals*

In the Remedies Appendix, the CMA confirms that several parties to this Funerals Market Investigation “suggested that a remedy which recommends that the government reforms planning regulation for new crematoria could, either partially or fully, remedy the competition concerns [that the CMA has] provisionally found”.<sup>162</sup> Indeed, Memoria did so in its response to the Working Papers.<sup>163</sup> Further, the CMA has admitted that “there are economic barriers and also potentially planning barriers to new entrants.”<sup>164</sup> However, misled by its erroneous conclusion that the alleged provisional AEC is related to price, the CMA has rejected that planning form could address the customer detriment the CMA believes to have found.

As shown in § 4 of this response (*above*), Memoria believes that the alleged excessive profitability that the CMA has found for some crematoria is primarily related to the existence of certain underinvested and over utilised sites in areas protected by planning controls (e.g. highly populated areas subject to binding planning restrictions, whether urbanised or green belt). Although it is unable to verify this based on the data the CMA has shared, Memoria believes that if the CMA were to calculate the range of prices charged by sites that it has found to earn excessive profits, it would see that these include many sites where prices are not particularly high, and likely would not be constrained by a “one-size-fits-all” national (or regional) price cap.

Memoria knows that the CMA would also see relatively high priced sites [⌘] which *would* likely be constrained by any price cap, but which are not generating excessive profits, and are not contributing to the alleged AEC. As such, the alleged provisional AEC is fundamentally not driven by price alone, and a crude “one size fits all” price cap is fundamentally incapable of addressing any these concerns.

Memoria’s business model and its success are evidence that, where operators are able to enter and compete, the quality of crematoria offerings can be significantly improved while maintaining reasonable and competitive prices that [⌘]. This suggests that barriers to entry and lack of competition in areas boasting an excessively profitable crematorium should be the main focus of any effective remedy against the alleged provisional AEC.

Therefore, the CMA should consider remedy proposals aimed at relaxing planning restrictions on brownfield sites to facilitate entry in those highly populated areas. This would promote local competition, ultimately raising quality levels, moderating prices at those sites currently found to be generating excess profits (which will be the areas where entrants would find the most underserved/poorly served demand to be addressed, and therefore the strongest incentives to enter), and thus removing the underlying causes of excessive profitability.

#### 5.2. The PDR’s proposed interventions would harm consumers

Memoria remains very concerned that the CMA’s provisional conclusions in the PDR continue to reflect a fundamental lack of engagement with how competition really works in the crematoria sector, where

---

<sup>162</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 99

<sup>163</sup> Memoria’s response to the CMA’s Working Papers of 20 Feb 2020, para 4(b)(iii).

<sup>164</sup> CMA Funerals Market Investigation, *Provisional Decision report*, Appendix W, para 99

the competition issues really lie, and what drives them. Without this understanding, the CMA's proposed remedies cannot effectively improve the functioning of the market – and indeed if the CMA follows the trajectory set out in the PDR, is likely instead to worsen outcomes for families.

The PDR often lacks guidance on how the CMA interprets each individual piece of evidence: but it appears to characterise the crematorium market as one where:

- **Quality** is important but relatively uniform across sites, with quality differences playing only a limited role in driving customers' selection of a crematorium,
- Customers are insensitive to **price** – allowing crematoria to set prices unconstrained by competition; and
- Consumers pick a crematorium based overwhelmingly on its **location** (limiting competition between crematoria in most areas, given that it is not generally economic to build such a capital-intensive asset right next to an existing site).

Based on these findings, the PDR appears to conclude that the benefits of competition today are limited, and the risks of regulation are (as a result) minimal. Although this is not articulated clearly by the CMA in the PDR, this broad understanding of the market is the only way to understand the characterisation of the alleged provisional AEC as one of excessive prices across the board (with private sector crematoria and public sector crematoria both said to be charging prices around £200 higher for a standard cremation than they would be in a competitive market), and which can be straightforwardly resolved through a national or regional price cap.

While this narrative may be attractive in its simplicity, it plainly does not reflect the reality of the market. As Memoria has set out in detail in this response, this mischaracterisation is reflected throughout the analysis set out in Chapter 6 of the PDR. In particular, if it were really the case that consumers prioritise location over all other considerations (and particularly over the quality and price of the offer) in choosing a cremation, and that this (combined with high entry costs and barriers to entry created by the planning system) results in crematoria essentially benefitting from a monopoly over their closest customers, we should expect to see:

- Survey responses that focus entirely on location as the driver for choice of crematorium (while in reality around 50% of respondents mentioned quality rather than location factors in explaining their choice of crematorium, and closer to 70% mention quality rather than location factors when explaining why they would recommend the crematorium they used to somebody else);
- Relatively limited demand from out-of-area customers (where in reality Memoria obtains around 40% of its business from “battleground” areas);
- Business models that rely on minimising costs and investments (to maximise profitability) – given that demand is said to be relatively insensitive to quality (where in reality Memoria's business model is the opposite: to provide a high quality asset that can be used to provide high quality services, and thereby to draw demand from a wider area – making it possible to locate in areas that otherwise could not support a crematorium based purely on customers for whom Memoria was the closest supplier);
- Lack of reaction by consumers or rivals to entry (outside 18 minute drive times) and to quality and price changes (where in reality Memoria sees significant examples of customer and competitor responses to price and quality decisions made by crematoria – even focused on Memoria's relatively small number of sites and relatively short participation in the market – and evidence that Memoria benchmarks to competitors well over 18 minutes drive from its locations);



- A clear relationship between profitability, prices and the number of rivals in an 18 minute drive time (where in reality we see no clear relationship between the profitability or prices of Memoria's sites and the number of rivals within 18 minutes drive time); and
- Limited variations in profitability across suppliers and sites (where in reality the CMA's profitability analysis shows that many crematorium operators in both the private and public sector are *not* making excessive profits – including those that do not face a large number of rivals in the PDR's narrowly defined catchment areas.

As explained above, to the extent that high profits are seen in the crematoria sector in Memoria's view these will be more strongly driven by those crematoria in favoured locations (e.g. city centre or green belt locations with a large local demand and no threat of entry due to planning restrictions) carrying out very high numbers of cremations from old and underinvested facilities (thereby tying up limited capital). The offer of these sites will often be medium or low priced (so would not be affected by a cap), but cannot be said to be good value for money to customers, given the large profits that can be generated by this low quality and low investment business model.

Despite Memoria's comments in response to Working Papers, the CMA has made no effort in the PDR to investigate the extent to which any excess profitability that it finds is associated with high prices. That is, the CMA does not provide any evidence in the PDR to suggest that the *driver* of excess profitability (to the extent it exists),<sup>165</sup> is high prices. Under these circumstances it cannot be right to turn to a *price cap* as a solution to the identified (but poorly defined) "problem".

If Memoria is correct that excess profits are driven more strongly by excess volumes at certain older/depreciated crematoria, rather than by high prices, then the price cap remedy will not only be ineffective, but actively damaging to consumers. Already [REDACTED] Firm D and many local authority crematoria are barely covering their cost of capital, even based on the assumptions of the CMA's (flawed) profitability assessment. While the CMA does not state whether these suppliers have high or low prices (and therefore whether they would be directly constrained by the proposed remedy), certainly in Memoria's case it would expect to be constrained by any price cap imposed, based on the detriment figures discussed in the PDR. As set out in detail in the remedy discussion above, at the types of price cap suggested by the PDR [REDACTED].

So what would happen to consumers if the CMA's proposals as set out in the PDR are carried to their logical conclusion?

- Certainly new investment in the types of sites developed by Memoria in the past decade will not be viable. Indeed, more generally investment in crematoria is unlikely to be viable (given that new sites are generally likely to have similar economics to those of Memoria, given planning restrictions). This will inevitably result in greater congestion at existing crematoria (and associated worse service to families).
- Moreover, investments to improve quality at existing sites are also unlikely to be viable – as there does not appear to be any proposal that the price cap could flex to take account of sites that were more heavily invested (e.g. in keeping facilities up to date, ensuring car parking facilities were sufficiently large, etc.). While there would still be some incentive to undertake such investments at sites generating a positive gross margin (in order to draw in demand from outside each site's core area), depending on the level of the cap this may not be all sites – and in any case the strength of such incentives will be substantially lower than is the case today.
- Sites that are able to generate a positive gross margin, but not to cover current levels of overhead ([REDACTED]), will need to severely reduce overheads (to the limited extent possible) and

---

<sup>165</sup> Memoria has several concerns over the profitability analysis set out in the PDR, which are likely to mean that the extent of excess profits in the sector (if any) are overstated.

shift to a lower quality business model to survive (if this can be done sufficiently to make the site viable – which is not guaranteed).

- Moreover, it is likely that many of these sites (where overheads cannot be covered through the gross margins that could be earned at a capped price even at reduced service and investment levels) would simply become non-viable. These sites will need to close – with the associated distress that this would bring to families whose loved ones’ remains are interred or scattered there, as well as the loss of future service to local families who (absent the closure) would have chosen that site over the alternatives, and the knock on effects of higher volumes (and lower quality) at surrounding sites.

The CMA should consider very carefully whether this is really the market that it wishes to create – effectively turning the clock back to a period of lower prices but also fewer crematoria, higher congestion of chapels and parking facilities, lower investment, shorter slot times and more buildings falling into disrepair.

It is disappointing that an assessment of these risks is not even touched on by the CMA in the PDR, despite the proposal to impose a highly interventionist price cap on the sector. In situations where such drastic interventions are considered, it is particularly incumbent on the CMA to ensure that the possible adverse consequences of and proposed intervention are fully considered and quantified – as well as the potential benefits. This simply has not been done. In Memoria’s view, if it were done, it would show that a price cap is likely to worsen outcomes for consumers overall, with detriments associated with the “remedy” severely outweighing the benefits. However, given Memoria’s limited access to the data set out in the PDR, and on which the CMA mounts its case for intervention, only the CMA is in a position to carry out this analysis – and it is incumbent on it to do so.

### 5.3. The “supplementary MIR”

In relation to the CMA’s proposal to “keep on the agenda” the possibility of price regulation remedies by recommending that the CMA’s Board consider consulting on a “supplementary MIR” focussed on pricing once the impact of COVID-19 on the funerals sector has subsided,<sup>166</sup> Memoria has already submitted in confidential correspondence its belief, supported by Leading Counsel, that the PDR’s proposal is one of doubtful legality in light of the CMA’s obligations under the Enterprise Act 2002. In fact, the CMA has a duty to take reasonable and practicable steps to remedy, mitigate or prevent any AECs that it has identified during this Funerals Market Investigation.<sup>167</sup>

What the CMA seems to intend in the PDR is to take the findings in this Funerals Market Investigation, ignore the statutory duties associated with those findings, and then carry over and employ those findings in a subsequent “supplementary MIR” to justify remedies, including price controls.<sup>168</sup> Memoria’s concern is that the “supplementary MIR”, a term not known in the legislation, will simply start where this Funerals Market Investigation left off and be based upon the earlier findings. Thus, it would offer no credible opportunity to refute or challenge the price control remedies which, by implication, are not reasonable or practicable to advance now. **This is an illegitimate way of proceeding.**

In fact, it unreasonably places Memoria in a difficult position whereby, if the CMA does not advance price control remedies as part of this Funerals Market Investigation, Memoria’s right to challenge the final report would be circumscribed. There would be little point in challenging a report which had marginal immediate consequences to Memoria. In the absence of a price control remedy, an appeal would be hypothetical, if permitted at all. Equally, if Memoria did not challenge the evidential bases and analyses that would justify price control remedies as reasonable and practicable, were they ever to

---

<sup>166</sup> CMA Funerals Market Investigation, *Provisional Decision report*, paras 22; 9.21(b)(iii), 9.153(c), 9.158, 9.183, 9.186, 9.187, 9.202, 9.208, and 9.215.

<sup>167</sup> Enterprise Act 2002, s 138(2).

<sup>168</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 9.158.

be proposed at some unspecified time in the future, the CMA would appear to regard those findings as justifying price control at some time in the future.

This is not how the legislation should work.

In more detail, in the PDR, the CMA has identified the alleged provisional AEC as one of excessive prices and excessive profitability.<sup>169</sup> While the CMA is proposing sunlight remedies for immediate implementation, which the CMA consider would only have *some* mitigating effect,<sup>170</sup> the CMA's provisional conclusion is that price control remedies are required in the "longer term" to effectively remedy, mitigate or prevent the alleged provisional AEC identified now.<sup>171</sup> Yet, the CMA is choosing to defer the design and implementation of price control remedies to a "supplementary MIR" that may or may not be started at some uncertain point in the future at the sole discretion of the CMA's Board.<sup>172</sup> The net result is continuing uncertainty, which is completely contrary to the provisions and policy of the legislation.

The CMA has a statutory obligation to conclude this Funerals Market Investigation with a clear statement of the remedies that it deems are required, and to provide a reasonable and proportionate solution to the alleged provisional AEC.<sup>173</sup> By deferring (and perhaps pre-judging) the implementation of a definitive remedy for the alleged AEC to a "supplementary MIR", **the CMA is acting with doubtful legality and it is wholly undesirable to impose continuing uncertainty on the industry.**

Further, the PDR states that "the CMA board should consider consulting on a supplementary MIR at its earliest convenience", and that this should be "primarily determined by the CMA board's assessment of the impact of COVID-19 on the funerals sector and the point at which the CMA board is of the view that the sector is sufficiently stable".<sup>174</sup> Additionally, the PDR also states that "the recommendation to the CMA board to consider consulting on a supplementary MIR is not intended to immediately address the AECs and resulting customer detriment that we have provisionally found. Rather, it is a mechanism to allow time for the impact of COVID-19 on the funerals sector to subside. At that point, it would be appropriate for the remedies that we have provisionally decided not to proceed with [...] to be given closer and renewed consideration".<sup>175</sup>

Therefore, by deferring the question of price regulation to a "supplementary MIR" on the same issues as this Funerals Market Investigation, the CMA would be *de facto* artificially (and, therefore, potentially unlawfully) extending the statutory deadline, the entire purpose of which is to provide legal certainty and avoid undue delays. By doing so, the CMA would be inevitably increasing the sector's uncertainty as the prospect of a "supplementary MIR" would frustrate investment and other decisions in the interim. In addition, the proposal is expressed conditionally, and the industry has no idea of the circumstances in which the CMA Board would or would not institute a "supplementary MIR" or what "stable" means.

While Memoria does not accept the legality of any "supplementary MIR", if the CMA wanted to proceed in such a way, a second funerals market investigation should have a blank slate as its starting point. The alleged provisional AEC that the CMA believes to have found in this Funerals Market Investigation should not be *carried over* as fact, nor should any information gathered by the CMA during its monitoring of the "sunshine remedies" and/or the market as a whole be *carried over* and purported as corroborating evidence of past conclusions. In fact, for a "supplementary MIR" to be truly reflective of the UK funerals market in a post-COVID world, it should be conducted (and its conclusions be drawn) on the basis of the facts reigning at the time, not a month- or potentially year-old alleged provisional AEC supported by equally out-of-date evidence.

---

<sup>169</sup> *ibid*, paras 8.18-8.25, and 8.27(a).

<sup>170</sup> *ibid*, para 9.157.

<sup>171</sup> *ibid*, § 9.1.

<sup>172</sup> *ibid*, paras 22; 9.21(b)(iii), 9.153(c), 9.158, 9.183, 9.186, 9.187, 9.202, 9.208, and 9.215.

<sup>173</sup> Enterprise Act 2002, ss 138(2) and (4).

<sup>174</sup> CMA Funerals Market Investigation, *Provisional Decision report*, para 9.166.

<sup>175</sup> *ibid*, para 1.58.

Ultimately, as this response has argued thus far (including in, but not limited to, §§ 3 and 4, *above*), it is Memoria's belief that the CMA's analyses of and conclusions for the cremation sector are deeply flawed and, as such, they have misled the CMA into erroneously finding the alleged provisional AEC. Additionally, Memoria believes that the proposed price regulation remedy is (i) ineffective; (ii) disproportionate; and (iii) destructive of relevant consumer benefits (see § 5, *above*). Therefore, as any "supplementary MIR" would inevitably be conducted on the basis of the blueprint set by this Funeral Market Investigation, Memoria wholeheartedly rejects the CMA's assertion that its benefits are "likely to exceed its costs" to the industry.<sup>176</sup>

Finally, the CMA has cited the supposed impact of the coronavirus pandemic as the reason for deferring the design and implementation of any price regulation to a "supplementary MIR". Specifically:

- (a) COVID-19's impact on the conduct of this Funerals Market Investigation and, in particular, the alleged difficulty in obtaining data and the need to design and consult upon effective and proportionate price control regulation;<sup>177</sup> and
- (b) COVID-19's alleged impact on the ability of the UK government and the devolved administrations in Northern Ireland, Scotland, and Wales to (i) engage in extensive consultations with the CMA, and (ii) act upon the CMA's recommendation to legislate and introduce price control regulation.<sup>178</sup>

Memoria finds that neither reason is credible; further, Memoria believes that the latter (b) is also unreasonable and inappropriate.

- (a) In relation to the impact that COVID-19 has had on the industry as a whole, Memoria agrees that this has been significant. Indeed, the period between March 2020 and May 2020 has been some of the busiest and most challenging times that the Memoria has ever experienced. However, Memoria has never refused to engage with the CMA on grounds that the pandemic was making it impossible for Memoria to do so. In fact, Memoria has responded to every CMA request and met every CMA-imposed deadline, including responding to the Working Papers of 20 February 2020 by the original deadline of 19 March 2020 (the CMA suspended that deadline in response to the pandemic).

While not in a position to speak for the industry, Memoria is unaware of any relevant data-gathering deficiency caused by the COVID-19 crisis. In fact, Memoria has always been ready to engage with the CMA, including at the height of the UK pandemic, as evidenced by correspondence between March and May 2020, and a conference call on 26 May 2020.

Further, Memoria notes that the CMA has not attempted to engage with Memoria on matters of remedies and price regulation since its Working Paper *Remedy options for regulating the price of crematoria services* was published on 20 February 2020. It is plain that the impact of the pandemic on the funerals industry has abated significantly since May 2020. In fact, the average weekly death rate over the last 10 weeks has been consistently lower than the 5-year average for the time of year. Given the CMA's assertions in the PDR, Memoria would have expected the CMA to start remedy consultations in early summer 2020, and Memoria would have been very willing to engage at that point.

Finally, the CMA does not spell out precisely what difference any delay will make to its analysis. Apart from the volume of deaths, which has reduced, and limits on attendance (which is certainly temporary as rates of infections are falling steadily), it is unclear what factors

---

<sup>176</sup> *ibid*, para 9.190.

<sup>177</sup> *ibid*, paras 9.231(a)-(d).

<sup>178</sup> *ibid*, paras 9.238(a) and (b).

will change to justify a delay to the consideration of price controls, and none are identified in the PDR.

It is, therefore, quite practicable for the CMA to proceed and specify the remedies which it believes are required as part of this Funerals Market Investigation. For the reasons set out above, Memoria believes that the CMA is simply not credible when it cites the impact of the COVID-19 crisis on the funerals industry as a justification for delaying the settling of the pricing issue on a “supplementary MIR”.

- (b) While Memoria cannot speak for the UK government or the devolved administrations of Northern Ireland, Scotland, and Wales, it is not aware of any member of the UK government or the devolved administrations having publicly stated that the impact of the COVID-19 crisis would make it impossible for them to engage in consultations with the CMA on any matter. Therefore, Memoria can only conclude that the CMA has pre-empted legislators’ response and cited it as a justification for delaying the settling of the pricing issue on a “supplementary MIR”.<sup>179</sup> As such, the CMA’s position is entirely speculative and, in any event, not credible.

Further, Memoria is deeply perturbed by the fact that the CMA would venture into speculating on the UK government’s and devolved administrations’ ability to legislate in response to any potential recommendation of price regulation that CMA may make as part of this Funerals Market Investigation.<sup>180</sup> Memoria strongly believes this sets a dangerous precedent.

The CMA has no power to bind government or parliament to legislate in response to one of its recommendations. In fact, when legislative action is needed to implement a remedy that the CMA has identified as part of any market investigation, the CMA may only recommend that government do so.<sup>181</sup> It is up to the UK government and/or the devolved administrations to consider such recommendation and implement it if they deem it appropriate.<sup>182</sup> Ultimately, neither the UK government, nor any of the devolved administrations, is under an obligation to legislate to enact any CMA recommendation.<sup>183</sup>

Therefore, Memoria is concerned that the CMA is seeking to stretch its statutory deadline in order to delay a potential recommendation to government until a time that it unilaterally decides is appropriate, based on its assumption of when the legislator might be in the best position to act upon it. That is to impinge on the government’s powers, and it is a matter for government to judge when to act or not act.

In conclusion, the CMA has a statutory obligation to conclude this Funerals Market Investigation with a clear statement of the remedies that it deems necessary, and provide a reasonable and proportionate solution to the alleged provisional AEC.<sup>184</sup> **Recourse to a “supplementary MIR” to impose price controls in the future is illegitimate.** The CMA must either conclude the estimation now, and there is ample time to do so, or not.

If the CMA wishes to impose price controls in the future, the legislation and procedural fitness requires it to institute a new investigation process in the light the facts reigning at the time. What the CMA cannot do is hold the threat of price controls over the industry indefinitely. Moreover, should these remedies require the introduction of new legislation, this obligation would also include making such recommendation to the UK government and/or the devolved administrations of Northern Ireland, Scotland, and Wales. However, it is not within the CMA’s remit to prejudge the legislator’s action or agenda.

---

<sup>179</sup> *ibid*, para 9.238(a).

<sup>180</sup> *ibid*, para 9.238(b).

<sup>181</sup> CMA 3 para 1.6; and CC3 (Revised) Annex B para 94.

<sup>182</sup> CC3 (Revised) Annex B para 95.

<sup>183</sup> CC3 (Revised) Annex B paras 95 and 97.

<sup>184</sup> Enterprise Act 2002, ss 138(2) and (4).

## 6. Conclusion

With this response, Memoria has demonstrated unequivocally that the CMA's conclusions in the PDR demonstrate a complete failure to understand how competition works in the cremation market. The CMA's misplaced presumption that prices in the industry are too high, and that price regulation is the only solution, has resulted in the CMA framing the issues of this market investigation to match the CMA's desired outcome. In doing so, the CMA has failed to recognise fundamental elements of the cremation market, including, most crucially, the role of quality in driving consumer behaviour.

Despite Memoria, and other industry participants, submitting robust and clear evidence to demonstrate how competition is currently working in the cremation sector, the CMA has either misconstrued this information, or ignored it entirely. Such a selective use of evidence, and complete lack of transparency in how the CMA has interpreted each piece of evidence to draw its provisional conclusions, has made it challenging for Memoria to respond fully on some points in the PDR.

The scale of the alleged provisional AEC, and assertion that private sector cremations are overpriced by £215, is based on a profitability analysis that is fundamentally flawed, and a complete misunderstanding of how providers of private sector crematoria, such as Memoria, operate. The CMA's proposal for a crude, and highly interventionist, "one-size-fits-all" price cap is therefore completely inappropriate. As Memoria has set out in detail in this response, not only would such a cap be ineffective and disproportionate, it would ultimately cause serious harm to consumers.

Finally, Memoria is extremely concerned at the CMA's intention to defer implementation of such a price cap, to a "supplementary MIR" at an unspecified point in the future. The CMA's reasoning for such action are neither credible nor justified, and of doubtful legality.