Funeral Partners' Response to the CMA's Provisional Decision Report

Executive Summary

Funeral Partners Limited ('**FPL**') welcomes the opportunity to engage with the CMA on its Provisional Decision Report ('**PDR'**).

The CMA appears to have identified certain features in the funerals industry which drive an Adverse Effect on Competition ('**AEC'**) finding in its PDR, such as low levels of customer engagement caused by challenging circumstances, lack of easily accessible and clearly comparable information on products and service (price/quality) and lack of visibility to customers of the level of quality of care given to the deceased by funeral directors. Because of these features, the CMA argues that funeral directors have been able to increase prices above inflation, which has in turn generated profits for providers to the detriment of consumers, with such detriment being estimated at around £400 per funeral.

We strongly disagree with these findings, and we therefore believe that there is no sound basis for any AEC. Instead, we maintain that the market is competitive, with providers competing on quality as well as price to deliver good outcomes for consumers, who are overall very satisfied with the services in the market (as the CMA's own research shows). We believe that the £400 figure does not take into consideration quality differences between providers (despite quality being the over-arching concern for consumers). In addition, we continue to refute the CMA's analysis when it comes to profitability, in particular, the calculations it has made relating to the industry and FPL's Return on Capital Employed ("**ROCE**") and Weighted Average Cost of Capital ("**WACC**").

The CMA's justification for its remedies – and its potential to recommend a supplementary Market Investigation Reference ('**MIR**') relies on the supposed 'detriment' it has identified through an extension of its profitability analysis. Its profitability analysis is by no means robust, and therefore the CMA cannot claim to have identified detriment. In addition, the CMA has not yet concluded that there is an issue around pricing, but rather leaves it open for a further investigation. We strongly disagree that the CMA has made a case for any supplementary MIR in relation to price, and we provide grounds against the CMA recommending any such course of action.

To the extent that Funeral Partners supports ongoing improvements in the industry for the benefit of consumers, we may nevertheless welcome certain remedies articulated in the CMA's PDR, however, we continue to disagree that these remedies are justified on the grounds of an AEC finding. Instead, our support is based on welcoming ongoing incremental improvements to the marketplace which, crucially, the industry itself is already aiming to address.

Accordingly, we provide our comments on the detail which the CMA has provided so far in relation to the specifics of each of its proposed remedies. We would also note that the remedies contain a limited amount of detail associated with the specifics of how each remedy would be applied in practice. FPL therefore requires much more detail in order to comment and/or fully support any proposed remedy.

Finally, many of the remedies already overlap with efforts which are already ongoing amongst industry participants in order to continually improve outcomes for consumers, in particular, the efforts of the Funeral Services Consumer Standard Review "**FSCSR**". The CMA's endorsement of the work of an organisation, such as the FSCSR, along with a requirement for all industry players to comply with any agreed ways of working arising from the FSCSR, may provide a more suitable alternative option for the CMA to progress achieving the outcomes it desires through its own remedies. This would avoid the CMA having to create its own framework in order to put into practice its remedy proposals.

Preamble

We structure our response to the PDR into the following sections:

- Part A: The CMA has still not accounted for quality variances between providers
- Part B: Arguments against the proposal for a supplementary MIR
- Part C: Comments on the CMA's profitability analysis in the PDR
- Part D: Our response to the proposed remedies

We then conclude our response to the PDR.

Part A – The CMA has still not accounted for quality variances between providers

The CMA's PDR has not in any way satisfactorily recognised that quality differentials between providers can, and do, explain price differentials between providers. As we have articulated on numerous occasions in past submissions, the distinguishing feature of competition in the funerals market is quality, and quality varies greatly across the country and within local areas.

The CMA accepts this (to the extent that it has recognised that 'back-of-house' quality does differ between providers) but it has not attempted to explain to what extent that such quality differentials are reflected in different price points for different providers (either through providers choosing, or not choosing, to invest in either 'back-of-house' quality or 'front-of-house' quality).

Instead, it continues to overlook the fact that quality plays into price points when it makes oversimplified and unsound assertions that consumer detriment arising from a supposed lack of effective competition between funeral directors is '*at least £400 per funeral on average*' (aspects of which are set out later in our response).[1]

In addition, when it comes to 'front-of-house' quality, it is remarkable that the CMA has to date produced no detailed Working Paper on how 'front-of-house' quality plays into price, despite scrutinising the industry for nearly two and a half years.

The CMA's PDR continues to treat the industry as if a funeral were a commodity product, as opposed to something which is a highly differentiated service marked by quality variances across providers. It remains the case that certain providers can, and do, invest more than others in critical aspects of both 'back-of-house' and 'front-of-house' service quality (such as investment in fleet, premises and people) and it therefore remains the case that quality differences can, and do, explain price differences between providers.

In general, the CMA has to date provided no evidence that suggests 'front-of-house' quality does not differ between providers and it appears to have overlooked the need to provide any sound evidence base which determines objectively the extent of 'front-of-house' quality differences between providers (and how these in turn play into cost bases and prices). In this context, the £400 figure cited in the PDR appears at best to be a speculative one or, at worst, a figure which may mislead consumers into thinking certain providers are overcharging consumers for the same commodity service.

Finally, the CMA continues to maintain that there is inefficiency in the industry which contributes to consumer detriment in the form of higher prices. FPL continue to dispute the simplicity of the CMA's assertions in this regard.

As highlighted in certain previous responses, we consider that all providers in the market will almost always by definition be 'inefficient'. This is a reflection of the commercial reality that the funeral industry is inherently uncertain, due to the impact of market death rate fluctuations (either increases or decreases). Thus the ability to assess efficiency in the market will always be undermined by this factor.

[1] Summary of PDR, page 5, paragraph 16.

There are natural 'peaks' and 'troughs' in demand as well as unexpected peaks, such as with flu outbreaks. As a high-quality business, FPL considers that it is important to be able to accommodate 'peaks' which may emerge. The ability to accommodate demand in these circumstances represents further investment in high quality and, in turn, reputation – which secures future business.

We would not want to turn clients away in instances of peak demand, nor would we tolerate unacceptable 'wait times' between the date of the funeral arrangement and the date of the funeral itself. In addition, and by means of further examples, we avoid closing funeral homes during the working day whenever possible, we invest in providing quality services both 'in hours' and 'out of hours', we typically prefer an employed workforce (as opposed to a casual workforce) and we have not moved to a model of 'by appointment only' (aside from some limited exceptions).

We believe that the availability aspect of our services (including 'face-to-face' availability and allowing for client choice when it comes to any preferred days and times of funeral) is an important quality factor for consumers and, in turn, generates repeat business and retains/grows market share.

Efforts to drive 'too much' of an efficient operation (through a sacrifice of certain aspects of quality) may lead to market exit. For example, we are aware of Co-op and Dignity closing branches in order to become 'more efficient' through having less of a geographical footprint, which may in turn have the effect of reducing competition. In this regard, quoting inefficiency numbers across the industry is completely meaningless, as such elements like the geographical footprint of providers and the availability of services can be seen as aspects of quality, and not simply a sign of inefficiency.

Part B – Proposal for a supplementary MIR

We fundamentally oppose the CMA's proposal to recommend a supplementary MIR. We oppose the proposal on three grounds:

1. **The recommendation is unlawful**
2. **The PDR does not provide a sound basis for concluding that a price control remedy is warranted, feasible and/or proportionate**
3. **The timing of COVID-19 does not provide a valid reason to justify a supplementary MIR**

We now elaborate further on these three grounds below.

The recommendation is unlawful

We believe that there is no case for a supplementary MIR to design and implement price controls. Furthermore, this recommendation is unlawful and *ultra vires*, in that it breaches the statutory deadlines in the **EA02**, seeks to introduce the concept of a 'supplementary' MIR foreign to the Enterprise Act, subjects funeral directors to intolerable legal uncertainty, distorts competition in the market and seeks to prejudge the outcome of any future MIR.

The funerals sector has been under continuous scrutiny for the last two and half years, not only due to the CMA's Market Study and subsequent (ongoing) market investigation, but also due to HM Treasury's simultaneous (ongoing) review of pre-paid funeral plans. This has imposed a very heavy burden on the funerals sector, not least on Funeral Partners, which, notwithstanding its designation as one of the three '*Largest*' suppliers of funeral director services, is a relatively small business with limited resources. As the CMA recognises, the sector is now also dealing with the unprecedented circumstances and challenges created by the COVID-19 pandemic.

The PDR explicitly characterises the remedies proposed in the PDR as only partially effective and a stop-gap '*until more fundamental remedies can be taken forward*', '*holding open the door to price controls when circumstances created by the pandemic change sufficiently to permit these to be considered*' (see paragraphs 20, 23, 26 and 9.183) and recommends to the CMA Board the making of a supplementary MIR '*at its earliest convenience*'[2] to remedy this situation.

[2] PDR paragraph 9.166 recommends that the CMA Board should "*consider consulting on a supplementary MIR at its earliest convenience*" and states "*We consider the CMA board's decision to consider consulting on a supplementary MIR should primarily*

We believe that for the CMA to seek, via its final report, to subject the funerals sector to an ongoing threat of an unprecedented '*supplementary*' MIR (pre-judged in order to implement an unknown form of price control remedy at some indeterminate date in the not-distant future) would be in clear disregard of the statutory framework for, and of, the policy underpinning the statutory deadlines for market investigations.

The 18 month deadline (extendable by an additional 6 months for special reasons) for the CMA's final report on a MIR under section 137 of the Enterprise Act 2002 (**EA02**) and the 6 month deadline (extendable by 4 months for special reasons) to implement remedies under section 138A EA02, were introduced by the Enterprise and Regulatory Reform Act 2013, precisely '*to ensure greater certainty and a reduction in the burden on business of an investigation*'[3]. Indeed, the concept of a '*supplementary MIR*' would directly undermine this key rationale of the statutory deadlines, which explains why there is no reference to a '*supplementary MIR*' in the **EA02**. As such, it is submitted that the final report should not make any reference to such a concept.

Funeral Partners states that what the PDR is now proposing runs counter to the statutory framework. Indeed, it would extend (potentially long) beyond the statutory deadline the legal uncertainty which is inherent in an MIR and which the statutory deadlines are intended to limit in time. As such, it would ensure the continuation of the economic burden of the MIR beyond the statutory period, in particular the economic impact on those firms operating or considering investing in funeral directors, whose incentives to invest or continue to invest in these businesses (including to invest in innovations in pricing and quality) will inevitably be harmed/distorted. The threat of the imposition of some form of price controls at some point in the not-too-distant future would create a situation of intolerable legal uncertainty. There is simply no justification for this.

The CMA Board is free at any time in the future to decide on a new Market Study/MIR in the funerals sector, applying the statutory tests set out in **EA02**, and to the extent the final report on any such future MIR decides that there is an AEC, the CMA has the necessary powers under sections 138, 159 and 160 **EA02** to remedy the AEC. However, it is submitted that it is *ultra vires*, entirely disproportionate, irrational, and/or unfair and, as such, unlawful, for the CMA in its final report on this MIR to seek to:

a) pre-judge the outcome of a future MIR; and
b) in the meantime, prolong the legal uncertainty and burden of the current MIR beyond the statutory period and indefinitely (i.e. until if/when the CMA Board makes a decision, which there is no guarantee that it will do, at all or in a timely fashion).

Indeed, the CMA itself acknowledges that the sunlight remedies proposed will (subject to further clarification and consultation on scope, practical implementation, etc) go '*a long way*' to ensuring customers have easily accessible information on services and costs. The CMA's guidelines[4] indicate that '*measures…intended to work as a catalyst to introduce greater competition into a market*' (as it is submitted the proposed sunlight remedies could properly be characterised) may require a longer bedding-in period. As such, it is submitted that the CMA should allow sufficient time for these remedies to take effect before considering whether further regulatory intervention is merited. It is not open to the CMA now to pre-determine the outcome of a hypothetical future investigation.

FPL accordingly invites the CMA to refrain from making:

a) (as proposed by paragraph 9.153 PDR) any recommendation in its final report to the CMA Board to '*consider consulting on a supplementary MIR at the earliest opportunity*'; or

be driven by 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".

[3] See paragraph 4.15 of *Growth, Competition and the Competition Regime* March 2012 BIS response to consultation, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192722/12-512-growth-and-competition-regime-government-response.pdf.

[4] *Market studies and market investigations: supplemental guidance on the CMA's approach* (CMA 3, Revised July 2017), at paragraphs 4.20(b), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/624706/cma3-markets-supplemental-guidance-updated-june-2017.pdf.

b) any statements designed to prejudge the outcome of any future MIR the CMA Board may choose to make (e.g. paragraph 9.170 '*the features giving rise to the AECs and material customer detriment that we have provisionally identified and which can only be addressed in the longer term through the consideration of the remedies that we have provisionally decided not to pursue and as set out in Appendix W*").

The PDR does not provide a sound basis for concluding that a price control remedy is warranted, feasible and/or proportionate

The PDR (at paragraph 9.227) states: '*given the nature of the features we have provisionally identified, as well as the scale and persistence of the customer detriment we have provisionally found, measures that control pricing outcomes are also likely to be necessary. We note that any such measures would need to be carefully designed and consulted upon to ensure that they were as effective as possible and proportionate. Although enabling measures will support some customers in making more informed choices about their funeral services purchase, enabling measures alone are unlikely to be sufficiently impactful to fully address the AEC and detrimental effects we have provisionally found in any reasonable timeframe (and may possibly not be impactful at all). While our assessment of the options for price control regulation has been curtailed by the impact of COVID-19 on our investigation (see paragraph 9.221), we are clear from our consideration of these options (as further discussed in Appendix W) that it would be feasible to develop* [emphasis added] *an effective and proportionate methodology for controlling the pricing outcomes that we have provisionally found*'.

However, at paragraph 83 of Annex W, the CMA goes on to state that '*in the absence of the Coronavirus (COVID-19) pressures on the sector, we consider that it would be feasible to determine an initial maximum price level for a benchmark package and that we could develop a viable methodology for this*'.

This is despite the fact that the PDR, at paragraph 84 of Annex W, goes on to list a number of objections to a price regulation remedy, including uncertainty as to the make-up of the benchmark package, risks flowing from over-specifying the package, question marks over the proportionality of the remedy and fears as regards unintended consequences. The CMA goes on to state in paragraph 85 that: *'Our preliminary view* [emphasis added] *is that these risks are capable of being overcome through further analysis, consultation and detailed specification of the price control regulation, absent the challenges presented by Coronavirus (COVID-19).*'

In other words, the PDR (in particular paragraphs 84 and 85 of Annex W) does not support any statement that price control regulation is, or is likely to be, warranted or feasible and makes clear that the CMA's investigation has not done that which would be required to come to a definitive view on that. As such, the statements in the PDR that a price control remedy would, absent COVID-19, be warranted, feasible and/or proportionate (e.g. paragraph 9.277 and paragraph 83 of Annex W) are not justified and should not feature in the CMA's final report.

The timing of COVID-19 does not provide a valid reason to justify a supplementary MIR

Finally, we would point out that we believe that the timing of COVID-19 does not provide a valid reason to justify a supplementary MIR. Much of the evidence in terms of 'requests for information' were provided before the COVID-19 pandemic. The case for the 6 month extension in order to allow more time for responses to certain Working Papers is understandable, however, the bulk of the Investigation was complete prior to COVID-19.

The CMA has exercised its right to extend the Investigation, but it has at the same time chosen to delay findings and seek more time to scrutinise the industry through a potential supplementary MIR. It is also the case that the CMA appear not to be using the entire 6 month extension to complete their Investigations (since the latest timetable to publish the Final Report is December 2020, yet the statutory deadline to complete the Investigation is 27th March 2020). As articulated above, the 6 month extension is in place precisely to deal with unprecedented circumstances but it appears that this time is not being used to complete the Investigation and the CMA's position is untenable in this regard.

Moreover, whilst it is the case that the COVID-19 pandemic has proved an extremely unfortunate and distressing time for many individuals, families and communities (as well as businesses), FPL believes that the funerals industry will continue to evolve and innovate during and after COVID-19, as it did prior to COVID-19. Trends which are already in play (such as the increasing importance of the digital channel, as well as innovation in relation to products/services such as 'direct cremation') will continue and may simply accelerate.

There may never be a 'right time' post-COVID-19 in order to recommend a supplementary MIR as no-one can be sure when the pandemic will be over, or when the effects of the pandemic could ever be truly understood, particularly as there will always be other macro-economic events in play which may affect the industry in one way or another.

Further, in a post-COVID-19 environment, the issues which the CMA encountered in its current Investigation will no doubt persist. These problems included:

- *'Throughout this investigation we have come across many challenges in obtaining information from smaller funeral directors.'*[5]
- *'We found one key issue with regards to profit and loss information, being that funeral directors were not able to provide revenue figures that split out funeral director services from disbursements. Any estimates of percentage split based on total revenue figures were their best guess.'*[6]
- *'We still have some concerns around data quality […]. We consider, however, that this is unavoidable given the nature of some of these businesses. It is clear from the answers we received that, some of the smaller funeral directors were unable to provide meaningful financial information, despite the relatively simple nature of the updated request we sent to them.'*[7]

In this regard, the COVID-19 pandemic has not changed the nature of the highly fragmented and highly localised nature of the industry, nor do we believe it will fundamentally change the fact that the vast majority of the market will continue to operate in an independent fashion. Notwithstanding the fact that FPL believes that any robust analysis undertaken by the CMA would not find an AEC in the market, it remains the case that, prior to COVID-19, the CMA did not manage to engage in a meaningful way with the industry which, in turn, has provided no sound evidentiary base for an AEC finding, nor any price control remedy.

Irrespective of the pandemic, the CMA has received several years of pre-COVID-19 data and information, and still has not been able to articulate an AEC around pricing. The CMA should therefore make clear that, based on the information available to it, there can be no AEC finding around pricing. The fact that the CMA has chosen in its PDR to not put forward a remedy around pricing we believe indicates that it cannot identify such an AEC.

Were the CMA to use its monitoring remedy to feed into any subsequent decision to make an additional MIR in order to introduce price controls, it must make clear by what metrics it will monitor and why this analysis, which perpetuates uncertainty in the market, should offer a materially improved picture with respect to the analysis performed over the previous years of scrutiny through the Market Study and subsequent Market Investigation.

Finally, notwithstanding the fact that FPL believes that there is no AEC finding which would ever justify price control remedies, the CMA has suggested that a price remedy be introduced quickly, yet it has not yet conceded the need to establish the impact of 'back-of-house' regulation on cost (and therefore prices), before any supplementary MIR could sensibly commence. Without this concession, this dramatically increases the likelihood that any supplementary MIR (unless it takes place after all providers have adapted to any new regulatory regime) will not have due regard for the impact of quality regulation on cost and price levels.

[5] CMA (2020), 'Funerals directors: Profitability Analysis', Appendix A, para.7.
[6] Ibid, Appendix A, para 13.
[7] Ibid, Appendix A, para 20.

A more sensible suggestion would be to link any further scrutiny of the industry only until the impact of quality regulation is in place and well-embedded. Even then, any MIR should not be seen as inevitable and, in the event of any MIR being put forward, the industry should be fully consulted on the scope of the proposed MIR.

Part C: Comments on the CMA's profitability analysis in the PDR

The CMA has set out its findings on the profitability of funeral directors as part of its PDR and accompanying appendices. In this report, the CMA has:

- estimated the average weighted ROCE of FPL to be [✂]% against an estimated industry WACC of 8%;
- found that there are excess profits in the industry; and
- based on the analysis of economic profits of the 'Large' firms, it has estimated the detriment to consumers to be £402 per funeral.

The above figures – in particular, the estimated ROCE of [✂]% for FPL – are not plausible either in the context of the current investigation or against relevant precedent, as set out in the following sections. Note: We have not repeated here some of the points we submitted to the CMA earlier this year in response to its analysis. Those points do, however, still stand since the CMA's analysis has not been amended – to the best of our understanding.[8]

We present five issues concerning the CMA's approach to ROCE and WACC:

1. **The approach to capital employed is too rigid**
2. **Alternative approaches have been rejected**
3. **The CMA dismisses important trends in profitability**
4. **The CMA methodology to compute detriment is flawed**
5. **The analysis produces wholly unrealistic results**

We now provide more detail to explain each of the above issues.

The CMA's approach to capital employed is too rigid

We believe the overestimation of ROCE is a result of the CMA's narrow approach to the estimation of capital employed, which does not allow for alternative explanations and has led to an underestimation of the intangible asset base of the business.

The Guidelines acknowledge that the estimation of capital employed means the calculation of profitability is often not straightforward, especially in industries with a relatively low level of tangible assets, such as service industries, due to the presence of significant intangibles.[9] The CMA applies, as per the Guidelines, a test to assess whether intangibles should be recognised. However, particularly given the challenges associated with valuing and recognising intangible assets as recognised by the Guidelines, in our view the CMA has taken an overly simplistic and binary approach.

Specifically, the CMA has taken a very narrow approach, excluding cost items and assets *in their entirety* by arguing that not *all* of the costs associated with those assets or cost categories would meet the required criteria. It has completely overlooked the arguments made by Funeral Partners in our Working Paper response in this regard. As such, the CMA has not taken into account any of these considerations in order to accurately assess which costs should be capitalised. Its failure to do this has a very material impact on the capital base.

As we have argued in earlier submissions, accounting for some of the intangible assets in our business with greater nuance would materially change the results of the CMA's analysis. We do not consider that

[8] Our points are summarised in the first section of our response, a non-confidential version of which can be accessed on the investigation. Funeral Partners Limited's non-confidential response to the CMA's Working Papers published 20-21 February 2020.
[9] CC (2013), 'Market investigation Guidelines, (CC3 Revised)', Annex A, paragraph 12.

the CMA has in any way adequately addressed the substance of our comments in this regard in its PDR.

We have put forward that the value of brand reputation should be closely considered, and as part of this, goodwill and elements of staff costs should be factored in. However, the CMA has dismissed goodwill, which makes up a large part of the capital employed in its entirety. By way of example, as per balance sheet figures for 2018, goodwill is valued at £55.6 million out of total assets of £129.8 million. Owing to the possibility that part of the price paid may reflect the purchase of market power and the inability to separately identify goodwill from the business, the CMA nevertheless wholly excludes these values. Whilst we recognise the issue of circularity, we do not believe the correct approach is to dismiss such a significantly material goodwill value in its entirety. In one of our prior submissions,[10] we highlighted that using a 2016 valuation of FPL's brand/trade names would result in a ROCE of [✂]%.[11] Such a figure demonstrates how heavily assumptions-based the analysis is, and hence the importance of sensitivity analysis. The CMA has not so far attempted to produce any sensitivities around its estimates.

We have also submitted that, as part of valuing the brand, some staff costs should be capitalised on the basis that this is a necessary investment to maintain a high-quality service. The CMA has argued that it does not consider 'the costs of providing a high-quality service are costs which are *primarily* aimed at earning income in the future' (emphasis is in the original).[12]

There is an acknowledgement here from the CMA that a high-quality service does contribute to future income. On that basis, the right approach is to differentiate between different types of staff costs and consider what element is primarily focussed at maintaining a reputation for quality and thereby aimed primarily at earning income in the future. For example, certain staff costs such as training and investment incurred with providing a higher quality service to customers (i.e. a service above and beyond 'the basics' of the role) are incurred by FPL. These costs do go above and beyond in order to drive future income and therefore could be capitalised in certain instances.

As such, some element of salary costs, such as higher salaries or bonus / incentive schemes to attract and retain higher quality staff, are incurred only because of a need to maintain quality with a view to future income. According to the CMA's own approach to the Guidelines, such costs should therefore be included in the measure of capital employed. The CMA has, however, not engaged with this argument, and has instead excluded all staff costs, including those costs that go far beyond what would be incurred were FPL only interested in current, short-term income.

For example, FPL has a performance management framework for Funeral Arrangers, Funeral Directors and Funeral Services Operatives. Individual staff members performing these functions are judged by management as being either at Stage 1, Stage 2 or Stage 3 in terms of their performance, with each higher Stage incurring a larger salary. Stage 1 represents a worker being able to complete the 'basics' of their role, however, FPL encourages progression to Stage 2 and Stage 3 which demonstrates greater progression in terms of the role. The Stage structure currently incurs £[✂] cost per annum to date, and it is expected to add a further £[✂] over the next 2 years, so £[✂] in total on a recurring annual basis.

As shown in the examples above, the CMA has taken a very binary approach to its analysis of the investments FPL has made. This has led to a vast underestimation of the capital employed and hence overestimation of ROCE as set out above. This results in a spurious 'accuracy' to the CMA's point estimates of consumer detriment, which are highly biased, and consequently unreasonably provocative.

Since we believe that a certain amount of goodwill should be factored into the CMA's analysis, it can also be noted that elements identified as being in respect of brand names (which should form part of the capital employed base for ROCE evaluation) is subject to an in-house goodwill impairment review process each financial year, this review is then subject to an external statutory audit. As such, this process considers the carrying value of goodwill at a 'Cash Generating Unit" ("**CGU**") level (identified

[10] Funeral Partners Limited's non-confidential response to the CMA's Working Papers published 20-21 February 2020.
[11] Funeral Partners Limited's non-confidential response to the CMA's Working Papers published 20-21 February 2020, para 4.12
[12] CMA (2020), 'Appendix S: Profitability of funeral directors', para 129

as being each operational management area of the business), and evaluates if any factors are arising which could trigger impairment at the CGU level.

Where any relevant factors are in place, then a full evaluation of the CGU goodwill value is performed. If an impairment is considered to be arising, an adjustment to the goodwill position is made accordingly. This evaluation process is subject to a statutory audit review each year, and as such determines the amount of goodwill held by the business at a true and fair level.

Alternative approaches have been rejected

Both FPL and Dignity have put forward to the CMA that trade names/reputation should form part of the intangible asset base. As noted above, the CMA has not considered our suggestions for alternative valuations as a sensitivity. An alternative has also been suggested by Dignity in the form of start-up losses. However, this has also been rejected by the CMA, and the CMA's explanation for this dismissal is based on very limited examples. Based on these, the CMA contends that there are unlikely to be start-up losses as initial costs can be less than £10,000 and only a handful of funerals per month are needed to break even.[13]

This raises several concerns. Whilst the CMA submits that it is possible to start a business with a low level of investment, the example it gives of what it is possible to achieve with this (i.e. the use of a branded van to advertise and transport the deceased, with no owned or rented premises) is a very basic service to 'get the job done'.[14] This is not representative of the costs required to provide a high quality service, or any service that approximates what a large number of people want from a funeral provider. The CMA also notes elsewhere in its report that the observable characteristics of quality are the condition of premises and vehicles, and staff training,[15] yet costs associated with investment in these characteristics are not featured in its example of start-up costs. These examples are also based on the submissions of independent firms, evidence which, owing to a limited number of responses, the CMA has conceded '*is no longer considered representative*'.[16]

More fundamentally, the CMA's analysis implies that barriers to entry are extremely low given the limited costs of starting a funerals business. In the presence of such low entry barriers, it can be expected that the threat of, and actual competition should mitigate potential adverse effects on competition. Therefore, it appears inconsistent that the CMA has found that entry barriers are low, coupled with the fact the 13 largest players only have 42% market share between them,[17] while maintaining that excessive profits are being made.

The CMA dismisses important trends in profitability

The CMA has also dismissed trends in profitability over time. As per Chart 1 and 3 in Appendix S, both the weighted average ROCE and economic profits of the three Large funeral directors have fallen year on year from 2015.[18] The CMA considers this problematic as although the there is a downwards trend, ROCE is still in excess of WACC and it is not convinced that market conditions are changing.

However, in its Guidelines the CMA explains that *'[w]here the size of the gap between the level of profitability and the cost of capital has grown over a period the competitive situation may have worsened. Where that gap has narrowed competitive condition may have improved*'.[19] It also explains that, *'[i]n a market characterised by effective competition, any excess of returns above the WACC would then be expected to be eroded over time*'.[20] In this market, there are signs that any excess profit is being eroded over time, just as prices growth has stalled. As previously articulated to the CMA, an erosion of profits would fit within the pattern of a market which continues to see the effect of ever-increasing competition, to which we can add the enormous shock of the COVID-19 pandemic. We recognise the CMA has put forward some alternative explanations behind this declining trend in profits,

[13] CMA (2020), 'Appendix S: Profitability of funeral directors', paras 139-140
[14] CMA (2020), 'Appendix S: Profitability of funeral directors', para 139
[15] CMA (2020), 'Funerals Market Investigation: Summary of Provisional Decision report', para 9
[16] CMA (2020), 'Appendix S: Profitability of funeral directors', Annex A, para 20
[17] CMA (2020), 'Funeral directors: Profitability Analysis', para 29
[18] CMA (2020), 'Appendix S: Profitability of funeral directors', pp. 44 and 46
[19] CC (2013), 'Market investigation Guidelines, (CC3 Revised)', para 124
[20] CMA 'Appendix D: profitability of Google and Facebook', para 10

which we are not in the best position to comment on as it pertains to other firms, but our experience is that profits in the market have been eroding over time.

The CMA methodology to compute detriment is flawed

As explained above, the CMA's analysis of ROCE is not robust and should not be used as a basis for the computation of excess profits.

In addition, even if the CMA were to refine the methodology it has developed, the results of a ROCE analysis cannot easily form a basis for the computation of detriment. The analysis of profitability is meant to be a test of whether economic profits are present in a market, but not serve as a precise indicator of the level of those profits. ROCE analysis also offers no guidance on the nature of those economic profits, and whether all the estimated amount can be considered excessive. The Guidelines state that at particular times profitability may exceed the cost of capital due to cyclical factors, transitory price or other marketing initiatives, innovation or efficiency.[21] It follows that it can't be assumed that all 'excessive profits' as computed by the CMA can be considered consumer detriment. We therefore consider that the CMA's figure of £402 (and any revised estimates that might be put forward) are spuriously accurate and cannot serve as a basis for a proportionality assessment.

The analysis produces wholly unrealistic results

In summary, and taking into account the aspects set out above, the CMA's estimate of an average ROCE of [✂]% for FPL is clearly erroneous. To put this figure into context, the CMA has conducted a Market Study into the major online platforms and advertising firms and found:[22]

- the ROCE for Google Search is likely to be in excess of 40% (against a WACC of 9%); and
- the ROCE for Facebook to be 51% (against a WACC of 9%).

[✂][23] [✂].

[✂].[24] [✂].[25] [✂].[26]

[✂].

We argue that the most credible explanation is that several inconsistencies and flaws in the CMA's approach have led to a significant underestimation of FPL's capital employed and therefore a grossly overestimated figure of FPL's ROCE.

Part D: Our response to the proposed remedies

As articulated in the Executive Summary, we maintain that any remedy the CMA may impose on the industry is not justified by an AEC finding but instead incremental improvement in the industry which FPL is supporting through other avenues, such as its support of the FSCSR.

We would reiterate our comments made in the Executive Summary that we believe the Notice provides very limited detail as to what each remedy means in practice for providers. As such, any support of any remedy below is conditional in this regard. In addition, FPL assumes that there will be no segmentation of remedy applicability based on provider size. In this regard, we are against any potential segmentation.

On this basis, we now provide our response to the proposed remedies. We have used the Notice of Provisional Decision Report ('**Notice'**) as the basis to structure our response to the proposed remedies,

CC (2013), 'Market investigation Guidelines, (CC3 Revised)', para 117.
[22] CMA Online platforms and digital advertising market study, 'Appendix D: profitability of Google and Facebook'
[23] CMA Retail Energy Market Investigation Final Report, Appendix 9.10 and 9.12.
[24] Though FPL would note that the CMA has incorrectly grouped FPL together with Co-op and Dignity as one of the 'Large' firms. Co-op and Dignity have estimated market shares of 17 and 13 percent respectively, in contrast, FPL has an estimated market share of 3 percent. CMA (2020), 'Funerals Market Investigation: Provision Decision report', para 2.72
[25] CMA (2020), 'Appendix S: Profitability of funeral directors', para 183
[26] *Ibid*

and we have provided our commentary in the right hand columns below, alongside the original text in the Notice in the left hand columns.

Price, commercial information and transparency

Narrative as per the Notice	FPL Response to CMA remedy
6. The Group has provisionally decided to require all funeral directors to provide customers with information on the price of their: *(a) Most commonly sold funeral package;* *(b) Standard funeral package (if different from (a)); and* *(c) Simple funeral package (defined as the simplest funeral package that the funeral director offers) (if different from (a))*	We are supportive in principle of this remedy (we already comply with the NAFD Code of Practice in this regard) but we would need more detail in relation to exactly where and how in the customer journey these items should be provided – we presume such information would be required to be provided on websites (should providers have a website) and in premises (as per the existing NAFD Code of Practice). In addition, in the absence of a very clear definition of what constitutes 'a funeral' or 'a package', there may be limitations and complications for consumers when making comparisons between providers. It is also not clear how any monitoring of this remedy would take place. In our experience, larger firms may be more compliant but the majority of the industry (i.e. the independent sector) is made up of smaller firms. Further, calculation methodologies which would need to be used to determine what is the 'most commonly sold funeral package' need to be extremely clear. In our experience smaller firms do not differentiate between funeral packages and, at worst, this remedy could become confusing to consumers and both costly and overly burdensome for providers. For example, over what time period should calculations be made? The majority of funeral services are not 'packaged' and are instead highly bespoke and traditional, so presumably these are out of scope for calculations, making the remedy much less meaningful to consumers. Are calculations to be determined at the national (firm) level or at the individual (branch) level? If the former, this may distort typical local preferences based on national demographics/choices. If the latter, this may become costly and overly burdensome for all providers to manage. Furthermore, this remedy does not appear to mandate that funeral businesses declare objective 'back-of-house' quality measures (at the same time as providing pricing and product/service information). Funeral Partners has consistently argued that any step to mandate that all providers declare
7. For each of these packages, funeral directors would be required to provide: *(a) A description of what is included in and excluded from the package;* *(b) The total price of the package as specified, which should reflect, as far as possible, the final price that customers are likely to pay for their chosen package; and* *(c) A description of the main disbursements, or additional costs, that are not included in the price of the package (eg burial fees or cremation fees) and an indication of their likely cost to the customer.*	

	their prices (in the absence of 'back-of-house' quality regulation) may lead to a 'race to the bottom' in relation to 'back-of-house' quality. In addition, unless this price transparency remedy is coupled with 'back-of-house' quality regulation, the CMA may continue to contribute to consumer detriment in implying that all funeral providers are consistent when it comes to 'back-of-house' quality, which Funeral Partners (and indeed the CMA) know is simply not the case.
8. In addition, funeral directors must also provide customers with a full price list of the disaggregated, individual products and services that they offer when those services are offered in addition to one of the funeral packages specified above, or when a customer is choosing to specify a funeral to their own personal requirements.	We are supportive in principle of this remedy but we would need to understand the requirement in detail in relation to exactly how to comply with this remedy given the plethora of client choice available in order to personalise funerals. We believe that this remedy may inadvertently contribute to inconsistency across providers as well as consumer detriment, unless the definitions of all products and services are clear, explicit and limited (around what is/is not a product/service in the context of a funeral). In addition, we would reiterate our comments above such that any step to mandate that all providers declare their prices (in the absence of 'back-of-house' quality regulation) may lead to a 'race to the bottom' in relation to 'back-of-house' quality. In addition, unless this price transparency remedy is coupled with 'back-of-house' quality regulation, the CMA may continue to contribute to consumer detriment in implying that all funeral providers are consistent when it comes to 'back-of-house' quality, which Funeral Partners (and indeed the CMA) know is simply not the case.
9. Funeral directors must also provide customers with details of their terms of business, specifically: *(a) The size of upfront deposit required;* *(b) When the deposit and final balance must be paid;* *(c) Any available payment options for paying the deposit and balance; and* *(d) Any charges for late payment*	We are supportive in principle but we would need more detail in relation to exactly where and how in the customer journey these items should be provided e.g. is it sufficient to provide this clearly as part of Terms & Conditions, if these Terms & Conditions are provided online and as part of the Estimate (Contract) for services (in premises).
10. To meet this obligation, funeral directors must: *(a) Make their price information and terms of business available to customers at their premises and on their website (if available). The information must be made available in a clear and prominent manner;* *(b) Provide their price information, as well as the price information of crematorium operators in the local area (eg all crematorium operators within a*	We would reiterate our comments around a requirement to clearly understand how any monitoring of this remedy would take place. In our experience, larger firms may be more compliant but the majority of the industry (i.e. the independent sector) is made up of smaller firms. Regarding (b), we are unclear what is meant by '*and to customers prior to the arrangement*

30-minute cortege drive time), to customers on request; and to customers prior to the arrangement meeting if this price information has not previously been requested by, and provided to, the customer.	*meeting if this price information has not previously been requested by, and provided to, the customer'*. We think it is inappropriate to force providers to give price information to a customer before the arrangement meeting (for example, over the phone) unless they have specifically requested price information. We believe the CMA agree on this point too (see Appendix W).
14. The Group has provisionally decided to require funeral directors to disclose to customers: *(a) The ultimate owner of the business;*	 We support being transparent when it comes to ownership, in line with the existing NAFD (and SAIF) Codes of Practice. For example, we fully support and implement the current practices of displaying ownership both externally, internally and on printed materials and contracts. We do not believe any further measures in the customer journey are required. For those firms who already comply with NAFD and SAIF requirements, we do not therefore expect that any remedy associated with disclosure will impact the customer journey, nor be overly burdensome or costly to implement.
(b) Where a funeral director has any interest in a price comparison website; and	We are supportive of disclosure and transparency around funeral director involvement in price comparison websites.
(c) Where a funeral director makes a charitable donation, charitable contribution or a payment of a gratuity to a third party (such as a bereavement office in a hospital, care home or other similar institution), or another form of payment that does not relate to a cost incurred or a service provided by the third party on behalf of or to the funeral director.	We think this remedy requires more clarity in relation to definitions. Here, Funeral Partners would like to make a distinction between 'charitable fund-raising' and 'charitable donations/contributions'. In relation to 'charitable fund-raising', we see these activities as being defined by generating monies for causes through independent third parties (as opposed to through direct donations/contributions from the funeral provider). Examples of 'charitable fund-raising' may extend to, but not be limited to, such things as an FPL Funeral Arranger running a marathon on behalf of a local care home/hospice or other similar cause, where any monetary donations to the cause are handled completely outside of FPL's banking arrangements. In this instance, we would see any donors to the cause acting in a personal and private capacity, and we do not therefore see this as a conflict of interest. As such, we do not see such 'charitable fund-raising' activities as requiring disclosure as part of this remedy. When it comes to 'charitable donations/contributions', if these are defined as direct payments (or provision of material gifts) from a funeral provider (including those

	instances where any payment or material gift is made by legal entities which may form part of any wider legal entity structure surrounding the funeral provider), then these donations/contributions may pose a conflict of interest, and as such may in fact be more akin to payments to encourage/incentivise referrals to the funeral provider. As such, in line with the remedy articulated in 16 (a), FPL would state that such donations/contributions should be prohibited. In addition, there would need to be clarity around which organisations are in scope when it comes to this remedy, and any role of sponsorship. For example, sponsorship of a local football club (which may be established as a charity) is somewhat distinct from sponsorship of a local care home activity. Further, and specifically in relation to 'gratuities', we would require additional clarity as to what constitutes a 'gratuity' (in the context of funeral providers working with third parties). For example, we are aware that certain funeral providers may pay 'gratuities' to certain third parties (which may represent more of a goodwill payment/gesture). However, certain 'gratuities' may also be paid to third parties in the event that these third parties have provided assistance to the funeral director in supporting carrying out the funeral director's duties (e.g. the third party supporting the removal of a deceased person in a third party mortuary into the funeral director's care). Given the complexities of this remedy (and the lack of any widespread evidence of consumer detriment), remedy design may be best determined by any future regulatory framework.
15. To meet this obligation, funeral directors must make this information available to customers at their premises and on their websites (if available) in a clear and prominent manner.	Please see our comments above. Crucially, we would expect that in implementing any proposed remedy, none of these remedies should prove burdensome or disruptive to the client journey.
16. The Group has provisionally decided to prohibit funeral directors from engaging in the following activities: *(a) Arrangements or any exchange of services with, or payments to, hospices, care homes and other similar institutions which encourage or incentivise those institutions to refer customers to the funeral director;*	We would note here that the CMA has not established that this remedy is needed in order to solve a problem which characterises the industry as a whole. We would therefore expect any CMA messaging around this remedy to reflect this sentiment (as opposed to any messaging which implies that such practices were widespread in the industry which would cease as a result of this remedy being implemented).

	Further, in line with out comments above, we presume by the definition that 'charity fund-raising' does not form part of an 'arrangement' or 'exchange of services'. We maintain it would be extremely damaging if, as an unintended consequence of this remedy, such legitimate activities were curtailed or compromised. As such, given the complexities of this remedy (and the lack of any widespread evidence of consumer detriment), remedy design may be best determined by any future regulatory framework.
(b) Soliciting for business through coroner and police contracts. To comply with this requirement, funeral directors must adhere to any non-solicitation clauses that are in their contracts with coroners and the police, and not solicit business if any such clauses are not included in the relevant contract.	We are supportive of this remedy and we could quickly comply. However, assuming FPL has some existing contracts with coroners/police (which do currently allow solicitation), we would need time to formally renegotiate these contracts (or cease them) to reflect the required non-solicitation clauses.
17. To comply with this remedy, funeral directors must terminate any existing arrangements or exchange of services with, and stop making payments to, third parties as outlined in paragraph 16 (a) and (b). Funeral directors are also prohibited from establishing any new arrangements, engaging in any new exchange of services or making any new payments.	

Improving the quality of funeral directors' back of house standards

18. The Group has provisionally decided to recommend to the UK government and the devolved administrations in Northern Ireland and Wales to establish in England, Northern Ireland and Wales an inspection and registration regime to monitor the quality of funeral director services and as a first step in the establishment of a broader regulatory regime for funeral services in England, Wales and Northern Ireland.	We are supportive of the recommendation to the UK government in relation to the establishment of a regulator who focuses in particular on 'back-of-house' standards. On the detail associated with the regulatory framework, we refer the CMA back to FPL's response to the CMA's Working Papers published 30th January 2020. We would note again that we strongly maintain that 'back-of-house' regulation must be a pre-condition for any price transparency remedies to be implemented. This pre-condition is in order to avoid a 'race to the bottom' (in particular, concerning 'back-of-house' quality) and to avoid consumer detriment (to the extent that such price transparency remedies imposed by the CMA may imply that there exists a level playing field on quality throughout the industry, in particular 'back-of-house') when FPL and the CMA recognise that this is not the case.

Continuing review of the funerals sector by the CMA

19. The Group has provisionally decided to recommend to the CMA board to: *(a) Actively monitor consumer outcomes in the funerals sector, in order to identify and, where possible, address any harmful behaviour, by tracking funeral volumes and revenue and encouraging customers or third parties to report any non-compliance with price disclosure obligations or any other harmful behaviour to the CMA;* *(b) Publish an annual review of consumer outcomes in the funerals sector*; and	We oppose any monitoring process which is not representative of the market and, as such, any monitoring which the CMA may recommend as part of this remedy must involve the independent sector being scrutinised more than the "Larger" providers, given the "Larger" providers make up a minority of the market. We support the principle of independent avenues of redress for customers with issues concerning price disclosure obligations. We would want to understand the role of any trade associations in this regard too. We are unclear what is meant by 'consumer outcomes' and we would need more detail before we could support such a remedy. Any outcomes which are monitored must focus on more than just 'price' and must take into account 'quality' factors (which include both 'back-of-house' and 'front-of-house' quality).
(c) Consider consulting on a supplementary market investigation reference at the earliest opportunity once the impact and consequences of Coronavirus (COVID19) on the funerals sector are sufficiently understood and the sector is more stable.	In line with Part B of this response, we are fundamentally opposed to any supplementary MIR.
20. To enable the CMA to monitor the funerals sector, the Group has provisionally decided to require funeral directors with five or more branches to provide to the CMA details of: *(a) The total number of funerals provided each quarter; and* *(b) The total revenue (excluding disbursements) during that quarter.* *21. For funeral directors with ten or more branches, this information must be provided both in aggregate form and split by simple, standard and other funerals (based on the funeral director's definition of these types of funerals).*	We disagree with the logic which links CMA scrutiny with size of provider. As such, the references to 5 or more branches (as well as 10 or more branches) being used to monitor the funerals sector are, we believe, inappropriate. We believe that this will lead to unintended consequences which include, but may not be limited to, the following: 1) Closure of branches by certain providers who have > 5 branches (or >10) e.g. 6 or 7 branches 2) Limiting incentives for growth of certain providers who have < 5 branches (or <10) e.g. 11 or 12 branches We believe that there is a material risk that certain firms may actively avoid expansion, or may dispose of certain locations, in order to avoid the burden of CMA scrutiny. This monitoring would in turn have the unintended consequence of reducing competition in the market (if firms chose to reduce the number of branches in operation) or if the burden of such scrutiny may result in certain firms deciding not to expand.

	Furthermore, there are a number of firms that conduct a significant number of funerals yet operate from less than 5 funeral homes. In addition, this remedy may completely miss certain digital players who operate principally online with minimal physical presence (including, but not limited to, 'direct cremation' operators). Were any monitoring to take place, a definition of a 'funeral' would need to be explicit. For example, would the definition include or exclude 'direct cremations' or 'children's' funerals. Further, we believe total revenue is an incorrect metric to request information. Total revenue will be determined by a wide variety of factors which include, but are not limited to, peaks and troughs in demand as well as client choice. As per the CMA's own analysis, there were 6,168 branches operating in the UK as of August 2019, owned by 2,294 firms.[27] This means the average firm in the UK operated between two and three branches. The CMA's PDR also finds that firms with less than five branches accounted for 47.4% of all branches and 95.9% of all firms.[28] It is unclear how the CMA considers that such a remedy is going to inform it on the state of competition in the market where it fails to account for such a significant segment of it. The CMA would not be surveying what is occurring in the long tail of smaller independent funeral directors, and its picture of market dynamics would therefore be biased. Its ability to also pick up on irregular conduct would be similarly greatly hampered. This is particularly important in case of any subsequent MIR, which would then be based on incomplete information. If any CMA monitoring of firms were to take place, we would see the number of funerals conducted as being a more appropriate measure, however, this number must start from a suitably low base in order to capture the majority of the market (which consists principally of the smaller, independent firms).

[27] CMA PDR, para 2.71.
[28] CMA PDR, Table 2.

Activity already underway relating to the CMA's proposed remedies

Funeral Partners would comment that a significant amount of activity has already taken place within the industry in relation to adapting and improving existing ways of working of funeral providers on behalf of consumers, and this activity goes some way to addressing the desired outcomes which the CMA hopes to achieve through the detail of its remedies, as articulated in the Notice.

Crucially, the FSCSR has already discussed much of the detail as to how the industry could adjust from both a 'standards and regulation' perspective (in relation to quality) as well as from a 'transparency' perspective (when it comes to prices and the general provision of products and services).

From a 'standards and regulation' perspective, the two trade associations (which cover circa 70% of the market) will soon be governed by a joint Code of Practice (as drafted by the FSCSR). In addition, both trade associations are supporting proposals for oversight of the industry through an 'arm's length' regulatory framework (open also to non-members of trade associations) and established as a Community Interest Company.

In relation to 'transparency', the FSCSR has already consulted on the detail of a proposal for a 'Key Information Form' ('**KIF**') for at-need customers. The KIF is likely to contain questions concerning the price of a provider's least expensive 'funeral' and least expensive 'direct cremation' (where both a 'funeral' and 'direct cremation' are clearly defined. In addition, the KIF contains questions around providers' payment terms and advance payments.

Funeral Partners reiterate that we maintain that there is no AEC which would justify it imposing a remedy and instead that the industry continues to adjust on an ongoing basis in order to improve outcomes for consumers through its own activity such as through the FSCSR. We would state that it would make more sense for the CMA to monitor or enforce all providers to comply with the work of independently-chaired groups (such as the FSCSR) in order to achieves the outcomes it desires through its remedies, as opposed to trying to create a new set of rules as part of progressing its own remedy proposals. The latter path we believe will be more costly, more time-consuming to implement and may not command the buy-in of many providers.

In any event, were the CMA to proceed with any proposed remedy as outlined in its PDR, we expect the industry and consumers to be fully consulted on the detail of the proposals, and for appropriate road testing to take place. Funeral Partners would be willing to support the CMA in this regard.

Conclusion

Funeral Partners maintains that there is no AEC in the market for funeral services which would justify any proposed remedy contained in the PDR. Crucially, the CMA has not understood how quality (both 'back-of-house' and 'front-of-house') plays into price, and its assessments in relation to profitability do not stand up to scrutiny. There is therefore no sound basis for an AEC finding.

However, notwithstanding the fact that we believe that there is no AEC in the market, we may welcome some of the remedies articulated in the PDR (including those relating to crematoria operators), but we would require more detail of how each remedy would work in practice in the industry (which goes above and beyond what is currently in the Notice) in order to comment or support fully. Any current support remains contingent on the provision of further detail being provided and on the assumption that the CMA takes into consideration the comments we have articulated as part of this response to the PDR (along with any future comments we may make on the remedy design, as and when any further detail emerges).

We would also state that the industry itself is continually adapting and improving the marketplace for consumers, the work of which the CMA could more formally support (in order to swiftly and effectively achieve some of the outcomes the CMA desires through the remedies it has articulated in the PDR).

We recognise that the CMA does not intend to offer Hearings to respondents as part of the PDR process. However, we are also conscious that the CMA had not read our response to the PDR at the point of proposing their approach to Hearings. In light of our comments on the PDR (as articulated in this response) Funeral Partners remains committed to engaging with the CMA on any material points of difference and we therefore remain open to the possibility of a Hearing in order to further explain our response to the PDR with the CMA.

Finally, we maintain that the CMA has neither a lawful basis, nor is there a competition concern, which requires a new reference to be made to the Board for any supplementary MIR in the funerals industry. Accordingly, any reference to a supplementary MIR should therefore be omitted from its Final Report.